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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
220 37954
916 37821
917 37821
945 37822
Proposed Rules:
917 37863

8 CFR
Proposed Rules:
245 37864

9 CFR
113 37823
166 37827

10 CFR
52 37828
71 37828
170 37828
171 37828

12 CFR
19 38024
225 38048
262 38048
263 38048
308 37968
701 37828

15 CFR
Proposed Rules:
2301 (2 documents) 38004, 38007

16 CFR
1500 37831

18 CFR
401 37954

19 CFR
24 37838

21 CFR
558 37838
Proposed Rules:
888 37954

22 CFR
Proposed Rules:
1007 37866

30 CFR
920 37839
Proposed Rules:
914 (2 documents) 37868, 37869
931 37870
935 37871
950 37873

32 CFR
Proposed Rules:
295 37873

33 CFR
165 (2 documents) 37851, 37852
Proposed Rules:
100 37886

47 CFR
22 37853
76 37954

48 CFR
219 37963
232 37963
252 37963
2801 37859

49 CFR
1011 37860
1151 37860

Rules and Regulations

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-91-286FR]

Expenses and Assessment Rate for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates for the 1991–92 fiscal year (March 1–February 29) under Marketing Order Nos. 916 and 917. These expenditures and assessment rates are needed by the Nectarine Administrative Committee and Peach Commodity Committee established under the orders to cover marketing order expenses and collect assessments from handlers to pay those expenses. This action also corrects section numbers incorrectly assigned to the proposed rule for this action. This action enables the committees to perform their duties and the orders to operate.

EFFECTIVE DATE: Sections 916.229 and 917.253 are effective for the period March 1, 1991, through February 29, 1992.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 [7 CFR part 916] regulating the handling of nectarines grown in California, and 917 [7 CFR part 917] regulating the handling of fresh pears, plums, and peaches grown in California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 handlers of California peaches and nectarines subject to regulation under Marketing Order Nos. 916 and 917 and about 1,800 producers of these commodities in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the packages of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee (NAC) met on May 2, 1991, and unanimously recommended a 1991–92 budget with expenditures of $4,276,873, which includes a total of $250,000 in anticipated uncollected assessments. In comparison, the 1990–91 fiscal year actual expenditures were $3,119,055. Major expenditures projected for 1991–92 with actual 1990–91 expenditures in parenthesis are: Salaries and employee benefits, $292,589 ($211,271); production research, $127,128 ($92,330); market development and promotion, $2,372,367 ($1,650,270); inspection, $1,036,440 ($951,897); and uncollected assessment accounts, $250,000 ($44,070).

The NAC estimates available 1991–92 assessment income at $2,902,505. This amount is based on assessments totaling $3,152,505 (17,274,000 packages of assessable nectarines shipped at $0.1825 per 25-pound package or equivalent), less $250,000 in anticipated uncollected contested assessments. Last year's assessment rate was $0.18. Assessment income will be supplemented with interest income from the reserve account estimated at $40,000 and income from export development and research subsidies from State and Federal agencies estimated at $451,000. In addition, the NAC had $666,477 in reserves as of March 1, 1991, an amount well within the maximum authorized. Total income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

The Peach Commodity Committee (PCC) met on May 2, 1991, and unanimously recommended 1991–92 marketing order expenditures of $3,887,673, which includes a total of

$115,000 in anticipated uncollected contested assessments. In comparison, 1990–91 fiscal year expenditures were $2,996,066. Major PCC expenditures projected for 1991–92 with actual 1990–91 expenditures in parenthesis are: Salaries and employee benefits, $262,750 ($197,486); production research, $141,321 ($63,738); market development and promotion, $2,092,765 ($1,557,180); inspection $1,088,990 ($1,009,631); and uncollected assessment accounts, $115,000 ($7,158).

The PCC estimates available 1991–92 assessment income at $2,840,830. This amount is based on assessments totaling $2,955,830 (15,557,000 packages of assessable peaches at $0.19 per 25-pound package or equivalent), less $115,000 in anticipated uncollected contested assessments. Last year's assessment rate was $.018 per package. Assessment income will be supplemented with interest income estimated at $34,000, and income from export development and research subsidies from State and Federal agencies estimated at $410,000. In addition, the PCC had $566,148 in reserves as of March 1, 1991, an amount well within the maximum authorized. Total projected income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

While this action imposes some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 916.229 and 917.253, and is based on the committees' recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** [56 FR 30881, July 8, 1991]. In that proposed rule, the section numbers were incorrectly identified as §§ 916.228 and 917.252. However, these section numbers applied to last year's (1990–91) nectarine and peach budgets and each should have been increased by one for the 1991–92 fiscal period.

Comments on the proposed rule were invited from interested persons until July 18, 1991. No comments were received.

After consideration of all relevant matter presented, including the committees' recommendations and other information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because of the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of these actions which were recommended at public meetings. Therefore, it is found that good cause exists for not postponing the effective dates of these actions until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements, Nectarines, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 916.229 is added to read as follows:

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.229 Expenses and assessment rate.

Expenses of $4,276,873 by the Nectarine Administrative Committee are authorized, and an assessment of $0.1825 per 25-pound package or equivalent of assessable nectarines is established for the fiscal year ending February 29, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.253 is added to read as follows:

§ 917.253 Expenses and assessment rate.

Expenses of $3,887,673 by the Peach Commodity Committee are authorized, and an assessment of $0.19 per 25-pound package or equivalent of assessable peaches is established for the fiscal year ending February 29, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: August 5, 1991.

William J. Doyle,

Deputy Associate Director, Fruit and Vegetable Division.

[FR Doc. 91–18956 Filed 8–8–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 945

[Docket No. FV–91–402]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 945 for the 1991–92 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1991, through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone, 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945) regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entities orientation and compatibility.

There are approximately 66 handlers and approximately 3,100 producers of potatoes in Idaho-Eastern Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the Idaho-Eastern Potato Committee, the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are producers and handlers of Idaho-Eastern Oregon potatoes. These producers and handlers are familiar with the committee's needs and with the costs for goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The recommended assessment rate was derived by dividing anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts and expenses are incurred on a continuous basis.

The committee met on June 11, 1991, and unanimously recommended a 1991–92 budget of $104,738 and an assessment rate of $0.0026 per hundredweight. The assessment rate is the same as that in effect each year over the past decade, and is the maximum allowed by the order. The budget is $6,338 more than last year's due to increases in expenditures for salaries and contingencies; however, this is partially offset by a decrease of $3,000 in the reserve for auto purchase. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 25,000,000 hundredweight, will yield $65,000 in assessment revenue which, when added to $6,000 in fees and interest income and $33,738 from reserve funds will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on July 15, 1991 (56 FR 32128). This document contained a proposal to add § 945.244 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through July 25, 1991. No comments were received

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991 fiscal period began on August 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is hereby amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 945.244 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 945.244 Expenses and assessment rate.

Expenses of $104,738 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of potatoes is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: August 5, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18957 Filed 8–8–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 91–053]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for Clostridium Bacterin-Toxoids and Tetanus Toxoid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the test methods used in conducting potency tests for serial release of Clostridium Novyi Bacterin-Toxoid, Clostridium Sordellii Bacterin-Toxoid, and Tetanus Toxoid. The current test methods for Clostridium Novyi Bacterin-Toxoid and Clostridium Sordellii Bacterin-Toxoid products require that potency be measured in a valid vaccination-challenge test in guinea pigs. The amended tests for these products involve serological conversion in rabbits and quantitation of the antitoxins in mice. The potency of Tetanus Toxoid products is currently determined by measuring the neutralization capacity of pooled serum from vaccinated guinea pigs. In the amended test for Tetanus Toxoid products, an enzyme-linked immunosorbent assay (ELISA) is used to quantitate the Antitoxin Units per ml of a serum pool derived from vaccinated guinea pigs. The new test procedures measure antitoxin responses which have been correlated to protective levels of antitoxin in the host species. These procedures will result in a more precise evaluation of potency of the products than test procedures which have been used. The new test procedures for Clostridium Novyi and Clostridium Sordellii Bacterin-Toxoids also allow for testing multiple antigens in the same test animals which results in using a reduced number of animals in potency tests for serial release.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics; Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

Clostridium Novyi Bacterin-Toxoid and Clostridium Sordellii Bacterin-Toxoid

The current Standard Requirements for Clostridium Novyi Bacterin-Toxoid and Clostridium Sordellii Bacterin-Toxoid specify that each serial of product be tested for potency in guinea pigs prior to release. The test animals are vaccinated with a prescribed dose of the product. Fourteen to fifteen days after a second injection, vaccinated animals, along with an acceptable number of controls, are challenged with an applicable virulent organism generally furnished by the Animal and Plant Health Inspection Service (APHIS). For a test to be satisfactory, at least 80 percent of the guinea pigs used as controls must die during the 3-day post challenge observation period and seven of eight treated animals must survive the challenge. If two of the vaccinated animals succumb to the challenge, the current standards provide for a second stage test. The use of virulent, spore forming challenge organisms in guinea pigs resulted in progressive, fatal disease in virtually all the controls. In the current test procedure, guinea pigs can be tested for only a single antigen. Therefore, each product was tested separately, since the test did not allow for differentiation of multicomponent products.

The Animal and Plant Health Inspection Service and the manufacturers of the products discussed in this final rule have cooperated in developing new tests modeled after the potency test currently codified in §§ 113.111 (formerly § 113.96) and 113.112 (formerly § 113.97) for Clostridium Perfringens Type C Bacterin-Toxoid and Clostridium Perfringens Type D, Bacterin-Toxoid, respectively. The cooperative effort was undertaken to (1) determine the minimum protective levels of antitoxin in sheep and cattle (animals for which these products are indicated); and, (2) to develop a potency test that would correlate the serological response and protective levels of antitoxin in sheep and cattle to the serological response in rabbits. The new tests which were developed allow for serological conversion in rabbits and quantitation of the antibody (antitoxin) level in mice. Using these tests, a product containing more than one antigen can be inoculated into rabbits and the serological responses to individual antigens measured in mice. Quantitating the response to individual antigens is accomplished by determining the neutralizing capacity of each antitoxin against its homologous antigen. For each antitoxin to be measured, an equal quantity of serum from each test rabbit is combined and tested as a single serum pool. At lease seven rabbits are required to make an acceptable serum pool. Graded volumes of the undiluted srum pool are combined with prescribed amounts of diluted Standard Toxin, as specified in the test procedures, and allowed to neutralize. Each resulting diluted mixture is then injected into five mice (for each antitoxin being measured).

Although the highest dilution of antitoxin will not protect mice from death, the disease process is not progressive and therefore is more humane than the spore challenge of guinea pigs.

The data accumulated from the cooperative studies with nine participating manufacturers has been analyzed. Based on that analysis, the Agency has concluded that these potency tests conserve time and animals, are more humane, and are a more accurate measurement of the quantity of antigens in the products and the quality of antitoxins produced in the host animals. The tests are more precise than the current tests used for evaluating products containing a single antigen or multiple antigens.

Tetanus Toxoid

The current Standard Requirement for Tetanus Toxoid specifies that each serial of product must be tested for potency in 10 guinea pigs. The test animals are vaccinated with a prescribed dose of the produce and bled 6 weeks later. An equal volume of serum from each of at least 10 guinea pigs is combined to make a serum pool. A prescribed amount of serum from the pool is combined with a standard amount of tetanus toxin, and inoculated into additional guinea pigs to determine if the serum from the vaccinated guinea pigs contain sufficient antitoxin to neutralize the toxin. A failure to neutralize the toxin would result in the deaths of the inoculated guinea pigs. It had been determined that the pool of guinea pig serum must contain at least 2.0 antitoxin units (A.U.) per ml for the product serial to be satisfactory. If the serial test is unsatisfactory, the pooled serum can be retested using 20 guinea pigs.

The Animal and Plant Health Inspection Service (APHIS) and manufacturers of Tetanus Toxoid have developed an assay method to replace the toxin neutralization test conducted in guinea pigs. The cooperative effort resulted in an enzyme-linked immunosorbent assay (ELISA) which accurately quantitates the A.U. per ml of the serum pool from the guinea pigs vaccinated with toxoid without requiring the inoculation and death of the additional guinea pigs used in the toxin neutralization test. The minimum antitoxin level required for a satisfactory guinea pig serum pool is retained at 2 A.U. per ml. Because the ELISA is more precise than the toxin neutralization test, the prescribed retest of unsatisfactory serials is conducted in 10 rather than 20 animals.

The Agency analyzed the data accumulated from cooperative studies with six participating manufacturers. It has concluded that the new potency test would conserve time and animals, and is more humane and economical than the current potency test. This test accurately measures the quantity of antitoxin(s) produced by the product in susceptible host species.

The final rule specifies that the antitoxin level shall be determined by an ELISA acceptable to the Animal and Plant Health Inspection Service. The Agency has prepared a Supplemental Assay Method (SAM) in accordance with 9 CFR 113.2(a) which details the ELISA test procedure that is used by the Animal and Plant Health Inspection Service.

Comments Received

On October 25, 1990, we published a proposed rule in the **Federal Register** (55 FR 42990–42993, Docket No. 90–042) discussing this revision. The proposed rule provided that comments would be accepted for 30 days, until December 24, 1990.

We received comments from four licensed manufacturers, one national trade association representing major research-based U.S. manufacturers of animal health products, and one regulatory agency.

All comments were favorable and supported the proposed rule. It should be noted that the sections in part 113 of the regulations and standards have been renumbered since the proposed rule was published. Therefore, proposed § 113.93 is not § 113.108, § 113.94 is § 113.109, and § 113.99 is § 113.114.

Three commenters noted that the potency test for tetanus toxoid in

§ 113.99(c), as proposed, specified injecting guinea pigs with 0.4 of the horse dose recommended on the product label. However, since some of the licensed tetanus toxoid products are recommended for cattle, sheep, and other species, but not for horses, they recommended modification of the potency test to provide for those products. The Agency agrees and § 113.99(c) has been modified to address this by changing the reference from the "horse dose" to the "largest dose" recommended on the product label.

One commenter noted that in the proposed § 113.99(c)(1) the wording should be amended to clarify that the serum from all the guinea pigs should be pooled. We have revised the wording for clarity, as suggested. There is no substantive change.

Based on the rationale set forth in the proposal and in this document, we are adopting the provision of the proposal with changes as a final rule.

In the final rule published in the **Federal Register** (55 FR 35556–35563, Docket No. 89–151) the Standard Requirements for § 113.93 Clostridium Novyi Bacterin-Toxoid; § 113.94 Clostridium Sordellii Bacterin-Toxoid; and § 113.99 Tetanus Toxoid were designated as §§ 113.108, 113.109 and 113.114, respectively. These changes have been made in this final rule.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The purpose of this action is to codify in the Standard Requirements updated procedures for conducting potency tests for serial release that are more economical, more humane, and more accurate than the superseded test procedures in measuring the quantity of antigen and quality of these products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Accordingly, title 9, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 113 will continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.15, and 371.2(d).

2. In § 113.108, paragraph (c), is revised to read as follows:

§ 113.108 Clostridium Novyi Bacterin-Toxoid.

* * * * *

(a) * * *

(b) * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency using the Alpha toxin-neutralization test provided in this paragraph.

(1) When used in this test, the following words and terms shall mean:

(i) *International antitoxin unit.* (I.U.) That quantity of Alpha Antitoxin which reacts with Lo and L+ doses of Standard Toxin according to their definitions.

(ii) *Lo dose.* The largest quantity of toxin which can be mixed with one unit of Standard Antitoxin and not cause sickness or death in injected mice.

(iii) *L+ dose.* The smallest quantity of toxin which can be mixed with one unit of Standard Antitoxin and cause death in at least 80 percent of injected mice.

(iv) *Standard antitoxin.* The Alpha Antitoxin preparation which has been standardized as to antitoxin unitage on the basis of the International *Clostridium novyi* Alpha Antitoxin Standard and which is either supplied by or acceptable to the Animal and Plant Health Inspection Service. The antitoxin unit value shall be stated on the label.

(v) *Standard toxin.* The Alpha toxin preparation which is supplied by or is acceptable to the Animal and Plant Health Inspection Service.

(vi) *Diluent.* The solution used to make proper dilutions prescribed in this test. Such solutions shall be made by dissolving 1 gram of peptone and 0.25 gram of sodium chloride in each 100 ml of distilled water; adjusting the pH to 7.2; autoclaving at 121 °C for 25 minutes; and storing at 4 °C until used.

(2) Each of at least eight rabbits of a strain acceptable to the Animal and Plant Health Inspection Service, each weighing 4–8 pounds, shall be injected subcutaneously with not more than half of the recommended cattle dose. *Provided,* That, if the product is recommended only for sheep, half of the recommended sheep dose shall be used. A second dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) Fourteen to seventeen days after the second dose, all surviving rabbits shall be bled, and the serum tested for antitoxin content.

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided,* That, if the test is not repeated, the serial shall be declared unsatisfactory.

(4) The antitoxin content of the rabbit serums shall be determined by the serum neutralization test as follows:

(i) Make a dilution of Standard Antitoxin to contain 0.1 International Unit of antitoxin per ml.

(ii) Make a dilution of Standard Toxin in which 0.1 Lo dose is contained in a volume of 1 ml or less. Make a second dilution of Standard Toxin in which 0.1 L+ dose is contained in a volume of 1 ml or less.

(iii) Combine 0.1 International Unit of Standard Antitoxin with 0.1 Lo dose of diluted Standard Toxin and combine 0.1 International Unit of Standard Antitoxin with 0.1 L+ dose of diluted Standard Toxin. Each mixture is adjusted to a final volume of 2.0 ml with diluent.

(iv) Combine 0.1 Lo dose of diluted Standard Toxin with a 0.2 ml volume of undiluted serum. The mixture is adjusted to a final volume of 2.0 ml with diluent.

(v) Neutralize all toxin-antitoxin mixtures at room temperature for 1 hour and hold in ice water until injections of mice can be made.

(vi) Five Swiss white mice, each weighing 16–20 grams, shall be used for each toxin-antitoxin mixture. A dose of 0.2 ml shall be injected intravenously into each mouse. Conclude the test 72 hours post injection and record all deaths.

(5) Test Interpretation shall be as follows:

(i) If any mice inoculated with the mixture of 0.1 International Unit of Standard Antitoxin and 0.1 Lo doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(ii) If less than 80 percent of the mice inoculated with the mixture of 0.1 International Unit of Standard Antitoxin and 0.1 L+ doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(iii) If any mice inoculated with the mixture of 0.2 ml undiluted serum with 0.1 Lo dose of Standard Toxin die, the serum is considered to contain less than 0.50 International Units per ml.

(iv) If the single pooled serum from seven or more rabbits contains less than 0.5 International Unit per ml, the serial is unsatisfactory.

3. In § 113.109, paragraph (c), is revised to read as follows:

§ 113.109 Clostridium Sordellii Bacterin-Toxoid.

* * * * *

(a) * * *

(b) * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency using the toxin-neutralization test provided in this paragraph.

(1) When used in this test, the following words and terms shall mean:

(i) *International antitoxin unit.* (I.U.) That quantity of antitoxin which reacts with Lo and L+ doses of Standard Toxin according to their definitions.

(ii) *Lo dose.* The largest quantity of toxin which can be mixed with one unit of Standard Antitoxin and not cause sickness or death in injected mice.

(iii) *L+ dose.* The smallest quantity of toxin which can be mixed with one unit of Standard Antitoxin and cause death in at least 80 percent of injected mice.

(iv) *Standard antitoxin.* The antitoxin preparation which has been standardized as to antitoxin unitage on the basis of the International *Clostridium sordellii* Antitoxin Standard and which is either supplied by or acceptable to the Animal and Plant Health Inspection Service. The antitoxin unit value shall be stated on the label.

(v) *Standard toxin.* The toxin preparation which is supplied by or is acceptable to the Animal and Plant Health Inspection Service.

(vi) *Diluent.* The solution used to make proper dilutions prescribed in this test. Such solutions shall be made by dissolving 1 gram of peptone and 0.25 gram of sodium chloride in each 100 ml of distilled water; adjusting the pH to 7.2; autoclaving at 121 °C for 25 minutes; and storing at 4 °C until used.

(2) Each of at least eight rabbits of a strain acceptable to the Animal and Plant Health Inspection Service, each weighing 4–8 pounds, shall be injected subcutaneously with not more than half of the recommended cattle dose: *Provided*, That, if the product is recommended only for sheep, half of the recommended sheep dose shall be used. A second dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) Fourteen to seventeen days after the second dose, all surviving rabbits shall be bled, and the serum tested for antitoxin content.

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(4) The antitoxin content of the rabbit serums shall be determined by the serum neutralization test as follows:

(i) Make a dilution of Standard Antitoxin to contain 1.0 international unit of antitoxin per ml.

(ii) Make a dilution of Standard Toxin in which 1.0 Lo dose is contained in a volume of 1 ml or less. Make a second dilution of Standard Toxin in which 1.0 L+ dose is contained in a volume of 1 ml or less.

(iii) Combine 1.0 International Unit Standard Antitoxin with 1.0 Lo dose of diluted Standard Toxin and combine 1.0 International Unit of Standard Antitoxin with 1.0 L+ dose of diluted Standard Toxin. Each mixture is adjusted to a final volume of 2.0 ml with diluent.

(iv) Combine 1.0 Lo dose of diluted Standard Toxin with a 1.0 ml volume of undiluted serum. This mixture is adjusted to a final volume of 2.0 ml with diluent.

(v) Neutralize all toxin-antitoxin mixtures at room temperature for 1 hour and hold in ice water until injections of mice can be made.

(vi) Five Swiss white mice, each weighing 16–20 grams, shall be used for each toxin-antitoxin mixture. A dose of 0.2 ml shall be injected intravenously into each mouse. Conclude the test 72 hours post injection and record all deaths.

(5) Test Interpretation shall be as follows:

(i) If any mice inoculated with the mixture of 1.0 International Unit of Standard Antitoxin and 1.0 Lo doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(ii) If less than 80 percent of the mice inoculated with the mixture of 1.0 International Unit of Standard Antitoxin and 1.0 L+ doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(iii) If any mice inoculated with the mixture of 1.0 ml undiluted serum with 1.0 Lo dose of Standard Toxin die, the serum is considered to contain less than 1.0 International Units per ml.

(iv) If the single pooled serum from seven or more rabbits contains less than 1.0 International Unit per ml, the serial is unsatisfactory.

4. In § 113.114, paragraph (c), is revised to read as follows:

§ 113.114 Tetanus Toxoid.

* * * * *

(a) * * *

(b) * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency. A group of 10 guinea pigs consisting of an equal number of males and females weighing 450 to 550 grams shall each be injected subcutaneously with 0.4 of the largest dose recommended on the product labels.

(1) Six weeks after injection, all surviving guinea pigs shall be bled and equal portions of serum, but not less than 0.5 ml from each, shall be pooled. For a valid test, the pool shall contain the serum from at least eight animals.

(2) The antitoxin titer of the pooled serum shall be determined in antitoxin units (A.U.) per ml using an enzyme-linked immunosorbent assay method acceptable to the Animal and Plant Health Inspection Service.

(3) If the antitoxin titer of the serum pool is at least 2.0 A.U. per ml, the serial is satisfactory. If the antitoxin titer of the serum pool is less than 2.0 A.U. per

ml, the serial may be retested by the following procedure: *Provided*, That, if the serial is not retested, it shall be declared unsatisfactory.

(4) For serials in which the serum pool contains less than 2.0 A.U. per ml, the individual serum that constituted the pool may be tested by the enzyme-linked immunosorbent assay. If at least 80 percent of the individual serums have an antitoxin titer of at least 2.0 A.U. per ml, the serial is satisfactory. If less than 80 percent of the individual serums have an antitoxin titer of at least 2.0 A.U. per ml, the serial may be retested in 10 guinea pigs using the procedure described in (c) (1) and (2) above. The antitoxin titer of the pooled serum from the guinea pigs used in the retest shall be averaged with the antitoxin level of the pooled serum from the initial test. If the average of the two pools is at least 2.0 A.U. per ml, the serial is satisfactory. If the average of the two pools is less than 2.0 A.U. per ml, the serial is unsatisfactory and shall not be retested further.

Done in Washington, DC, this 6th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18960 Filed 8-8-91; 8:45 am]

BILLING CODE 3410-10-M

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9 CFR Part 166

[Docket No. 90-250]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Swine Health Protection regulations by removing North Dakota from the list of States that prohibit garbage feeding. This action is necessary to reflect changes in the status of North Dakota, and thereby facilitate the administration of the Swine Health Protection regulations.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 736-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7767.

SUPPLEMENTARY INFORMATION:

Background

The Swine Health Protection regulations (contained in 9 CFR part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.*, and referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

Some States prohibit the feeding of garbage to swine. Other States permit the feeding of treated garbage to swine. North Dakota is currently listed in § 166.15(b) as a State that permits the feeding of treated garbage to swine. However, North Dakota law now prohibits the feeding of garbage to swine. We are therefore removing it from the list of States in § 166.15(b) and adding it to the list of States in § 166.15(a) that prohibit the feeding of garbage to swine. This action amends the regulations to accurately reflect North Dakota's garbage feeding status.

North Dakota remains on the list of States in § 166.15(c) that have primary enforcement responsibility under the Act.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

This action simply reflects changes that North Dakota has already made by statute with respect to Swine Health Protection.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

We are taking this action to update our regulations with respect to changes that have already occurred in North Dakota's law regarding the feeding of garbage to swine. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Food-and-mouth disease, Garbage, Hog cholera, Hogs, Reporting and recordkeeping requirements, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR part 166 is amended as follows:

1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (b) of § 166.15 is amended by removing "North Dakota,".

3. Paragraph (a) of § 166.15 is amended by adding "North Dakota," immediately after "New York,".

Done in Washington, DC, this 6th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18959 Filed 8-8-91; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 52, 71, 170, and 171

RIN 3150-AD87

Revision of Fee Schedules; 100% Fee Recovery, Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects a final rule appearing in the Federal Register on July 10, 1991 (56 FR 31472), that amended the regulations governing the licensing, inspection, and annual fees charged to Nuclear Regulatory Commission licensees. This action is necessary to correct several errors that occurred in final document preparation and printing.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-492-4301.

1. On page 31486, first column, first paragraph under item 3, fourth line, "$28.4 million" should read "$33.3 million."

2. On page 31486, second column, third paragraph under item b, first line, "$28.4 million" should read "$33.3 million."

3. On page 31487, first column, in the last full paragraph, the introductory phrase should appear in italics as follows:

"Activities and budgeted costs not currently assessed 10 CFR part 170 licensing and inspection fees based on Commission policy."

4. On page 31492, table IV, the direct FTE under the program element total for the line item "Decommissioning" which reads "144" should be revised to read "14.4."

5. On page 31492, the numbers in the entries directly following table IV were not properly aligned. These numbers should have appeared as follows:

$362.8 million [2]	
−71.9 million	
$290.9 million	

6. On page 31495, the headings to table VI should be corrected to appear in the same manner as the headings for table VII. Specific changes are as follows:

a. The word "Total" should appear over the first and second columns entitled "Program support $K" and "FTE."

b. The words "Allocated to fuel facility" should appear over the third and fourth columns.

c. The subheading for column three should read "Program Support $K."

d. The subheading for column four should read "FTE."

7. On page 31495, the numbers in the entries directly following table VI were not properly aligned. These numbers should have appeared as follows:

$13.3 million [2]	
−2.7 million	
$10.6 million	

8. On page 31495, in table VII, dollar signs should appear before the totals of $3,372, $1,973, $3,034, $4,183, and $27.2.

9. On page 31496, in the table at the top of the page, dollars signs should appear before the subtotals $936, $3,222, $4,158, and $1,080 and the totals $3,186, $7,452, and $10,638.

10. On page 31504, § 170.31, fee category 15, the introductory text of item 15c should be revised to read:

"c. All other export/import licenses/approvals."

11. On page 31506, § 171.15(d), in the second line, the word "and" should be removed. As correctly revised § 171.15(d) reads as follows:

"(d) The FY 1991 part 171 annual fees for operating power reactors are as follows:"

Dated at Rockville, Maryland, this 2d day of August 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-18871 Filed 8-8-91; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year Federal credit union loan rate ceiling is scheduled to revert to 15 percent on September 9, 1991, unless otherwise provided by the NCUA Board. A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of Federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the NCUA Board hereby continues an 18 percent Federa credit union loan rate ceiling for the period from September 8, 1991 through March 8, 1993. Loans and line of credit balances existing prior to May 15, 1987 may continue to bear their contractual rate of interest, not to exceed 21 percent. Further, the NCUA Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: September 9, 1991.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Charles H. Bradford, Chief Economist at the above address. Telephone number: (202) 682-9621.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96-221, enacted in 1979, raised the loan interest rate ceiling for Federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the NCUA Board to set a higher limit, after consultation with Congress, the Department of the Treasury, and other Federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (i) Money market interest rates have risen over the preceding six months; and (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the NCUA Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first half of the 1980's, the NCUA extended the 21 percent ceiling four additional times. On March 11, 1987, the NCUA Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 15, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. See Table I.

The Board felt the 18 percent ceiling would fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions could react to any adverse economic developments, and would ensure that any increase in the cost of funds would not impinge on earnings of Federal credit unions.

The NCUA Board would prefer not to set loan interest rate ceilings for Federal

credit unions. In the final analysis the market sets the rates. The Board supports free lending markets and the ability of Federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of credit union members. Congress has, however, imposed loan rate ceilings since 1934. In 1979 Congress set the ceiling at 15 percent but authorized the NCUA Board to set a ceiling in excess of 15 percent if the Board can justify it. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Justification for a Ceiling No Higher than 18 Percent

Table I shows interest rates on Prime Rate loans, 3-month Treasury Bills, 3-year Treasury securities and 30-year Treasury bonds, from December 1965 through December 1990, and monthly rates for the first six months of 1991. Clearly, interest rates fluctuate. But with generally declining market interest rates since 1988, which in turn affect credit union cost of funds, there is no justification for raising the current loan ceiling above 18 percent.

TABLE I.—SELECTED MARKET INTEREST RATES

December of	Prime rate	Treasury securities		
		3-month	3-year	30-year
1965	4.92	4.38	4.79	.....
1970	6.92	4.87	5.75	.....
1975	7.26	5.44	7.43	.....
1980	20.35	15.49	13.65	12.40
1985	9.50	7.10	8.40	9.54
1986	7.50	5.53	6.43	7.37
1987	8.75	5.77	8.13	9.12
1988	10.50	8.07	9.11	9.01
1989	10.50	7.63	7.77	7.90
1990	10.00	6.74	7.47	8.24
Monthly averages:				
January 1991	9.52	6.22	7.38	8.27
February	9.05	5.94	7.08	8.03
March	9.00	5.91	7.35	8.29
April	9.00	5.65	7.23	8.21

TABLE I.—SELECTED MARKET INTEREST RATES—Continued

December of	Prime rate	Treasury securities		
		3-month	3-year	30-year
May	8.50	5.46	7.12	8.27
June	8.50	5.57	7.39	8.47

Source: Federal Reserve System.

From March 1987, when an 18 percent ceiling was first established, short and intermediate rates rose, irregularly, about 300 basis points over the next two years, peaking in March 1989. Thirty-year rates rose about 160 basis points over the same period. In the 2¼ years since March 1989 all rates have cycled down to near their March 1987 levels.

If credit unions were able to live with an 18 percent loan ceiling under the market interest rate conditions of 1988 and 1989, they should be able to operate profitably with market rates which are below those levels currently.

Justification for a Ceiling Above 15 Percent

On the other hand, a ceiling above 15 percent is necessary. A drop in the loan ceiling to 15 percent could threaten the safety and soundness of many credit unions by giving rise to adverse trends in growth and earnings.

With all interest rates rising in June 1991 and the prospect of rising interest rates over the next year; with declining earning spreads; with a sizeable number of credit unions showing losses and the need to charge relatively high rates on unsecured loans (including credit card loans) because of high costs; with high losses associated with these loans, all of these factors combine to argue against allowing the ceiling to drop to 15 percent.

Market Interest Rate Trends

As noted above, market interest rates have been in an irregular downtrend for over two years, and particularly the past year. However, this is about to change. The economy is near the bottom of its current economic cycle. All major economic indicators point to the fact that the recovery from the 1990–1991 recession is about to begin. That means upward pressure on interest rates, and May 1991 may have been the trough for this cycle on short term rates. The intermediate 3-year securities and the 30-year bond rates troughed earlier, in February.

Rates were up across the board in June. As evidence of recovery mounts in the second half of 1991, the Federal Reserve will probably allow rates to move back up. We can look for rates in the short term area of 6¾ to 7 percent by Spring of 1992 and long term rates of 8¾ to 9 percent or more by then. (The long rates should drop back later next year as the numbers show that inflation is under control).

Furthermore, despite the downtrend in rates the past two years, and especially the past year, they are still higher today (except for 3 month Treasury bills) than they were when the Board acted in March 1987 to establish an 18 percent ceiling. With the prospect that rates will likely rise from here for a year or so, a lower loan ceiling could jeopardize credit union growth and earnings.

Growth

Federal credit union growth has slowed significantly the past few years. Following share and asset growth rates of over 20 percent in 1985 and 1986, Federal credit union share growth slowed to 5 percent in 1989, rising slightly faster at 7.5 percent in 1990. Asset growth slowed to 5.3 percent in 1989, rising slightly faster at 7.8 percent in 1990.

Earnings

Earning margins of Federal credit unions have declined somewhat over the past five years:

• Despite the decline in the cost of funds of Federal credit unions in recent years, spreads have declined. Since 1985, gross spreads have fallen by 41 basis points and net spreads by 10 basis points. See Table II. Both gross and net spreads have essentially levelled out the past three years, but gross spreads are still very close to their 1988 lows and net spreads are close to their 1987 lows.

TABLE II.—FEDERAL CREDIT UNION SPREADS DECEMBER 1985–1990

	June					
	1985	1986	1987	1988	1989	1990
Return on:						
Loans	13.52%	12.68%	11.58%	11.32%	11.43%	11.49%
Investments	9.47	7.94	7.67	7.65	8.43	8.01
Earning Assets	12.18	10.91	10.11	10.02	10.48	10.35
Gross return on total Assets	11.60	10.39	9.64	9.55	10.00	9.86
Cost of total Assets	7.23%	6.37%	5.65%	5.60%	5.98%	5.90%

TABLE II.—FEDERAL CREDIT UNION SPREADS DECEMBER 1985–1990—Continued

	June					
	1985	1986	1987	1988	1989	1990.
	(Basis Points From Here Down)					
=Gross spread	437	402	399	395	402	396
−Operating expenses	337	315	308	309	321	321
+Other Income	48	55	46	52	24	29
=Net Spread [1]	148	142	137	138	139	138

[1] Net spread before net loan charge offs and interest refunds, and before statutory reserve transfers.

• Credit union losses represent a significant and growing problems that must be weighed in setting a loan rate ceiling. Table III shows the number of credit unions, by size, experiencing losses in June 1989 and December 1990. The June 1989 data were used to help justify the last extension of the 18 percent interest rate ceiling. The total number has increased from 1,060 in June 1989, a total of 11.8 percent of Federal credit unions, to 1,090 in 1990, 12.8 percent of Federal credit unions. Most credit unions with negative earnings are small, less than $10 million in assets. While there has been a decline in the number of larger credit unions showing negative earnings, there has been a marked increase in the very smallest credit unions (less than $1 million in assets) showing losses. These credit unions would be among those most adversely affected by a reduction in the interest rate ceiling to 15 percent.

TABLE III.—FEDERAL CREDIT UNIONS EXPERIENCING LOSSES

Asset size	Number as of		Change
	June 1989	Dec. 1990	
Less than $1 million	387	545	+158
$1–2 million	168	139	−29
$2–5 million	185	172	−13
$5–10 million	135	99	−36
$10–20 million	71	69	−2
$20–50 million	73	48	−25
$50 million and over	41	18	−23
Total	1,060	1,090	+30

In summary, declining earning spreads, and a sizeable number of credit unions showing losses, raise a warning flag against setting the loan rate ceiling too low. This could threaten the safety and soundness of many credit unions by reducing their flexibility.

Table IV shows the number of Federal credit unions offering selected types of loans at various interest rates. Under a grandfather clause, a few credit unions still have on the books loans made at rates above 18 percent. These are loan contracts made prior to May 15, 1987, when the ceiling was 21 percent. Since May 15, 1987, no new loan can be made at a rate above 18 percent.

TABLE IV.—DISTRIBUTION OF FEDERAL CREDIT UNION LOAN INTEREST RATES

[Number of credit unions making indicated loans at indicated interest rates]

December 1990

Rate	Unsecured loans	New auto loans	Used auto loans	Fixed rate first mortgages	Fixed rate second mortgages
10.0% or less	59	1978	198	551	126
10.1–14.0%	2626	5362	6246	1165	2342
14.1–15.0%	2738	103	744	44	93
15.1–16.0%	1252	8	90	4	11
16.1–17.0%	639	4	18	2	4
17.1–18.0%	955	9	53	2	7
18.1–21.0%	6	3	4	8	2
Total [1]	8,275	7,467	7,353	1,776	2,585

[1] The number of credit unions offering the loan type and reporting rates charged. Some did not offer the loan type or report rates accordingly, the totals will be less than the number of federal credit unions (8,511).

Over one-third (2,852) of the Federal credit unions that offer unsecured personal loans charge more than 15 percent for these loans. This includes credit card lines of credit. While loan rates are, on average, lower for other types of loans, a few credit unions charge rates above 15 percent for these other loans as well. Credit unions charging between 15 and 18 percent on loans would be adversely affected by a 15 percent ceiling.

Efficiency of operations is an important determinant in setting a loan rate. Unfortunately, some inefficient credit unions—particularly small ones—could be forced into insolvency with a loan ceiling as low as 15 percent. It would place severe strains on a large segment of the credit union movement. Yet, market interest rate trends do not justify a rate above 18 percent.

In conclusion, the NCUA Board has continued the Federal credit union loan interest rate ceiling of 18 percent per year for the period from September 9, 1991 through March 8, 1993.

As previously indicated, loans and line of credit balances existing on or before May 15, 1987 may continue to bear their contractual rate, not to

exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant it.

Regulatory Procedures

Administrative Procedures Act

The NCUA Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

For the same reasons, a regulatory flexibility analysis is not required, 5 U.S.C. 604(a). However, the NCUA Board has considered the need for this rule, and the alternatives, as set forth above.

Executive Order 12612

This Final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal Credit Unions.

List of Subjects in 12 CFR Part 701

Credit Unions, Loan interest rates.

By the National Credit Union Administration July 18, 1991.

Effective date of this final rule is September 9, 1991.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 is continued to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798, and Public Law 101–73. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.21(c)(7) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) *Loan interest rates*—(i) *General.* Except when a higher maximum rate is provided for in paragraph (c)(7)(ii) of this section, a Federal credit union may extend credit to its members at rates not to exceed 15 percent per year on the unpaid balance inclusive of all finance charges. Variable rates are permitted on the condition that the effective rate over the term of the loan (or line of credit) does not exceed the maximum permissible rate.

(ii) *Temporary rates*—(A) *21 percent maximum rate.* Effective from December 3, 1980 through May 14, 1987, a Federal credit union may extend credit to its members at rates not to exceed 21 percent per year on the unpaid balance inclusive of all finance charges. Loans and line of credit balances existing on or before May 14, 1987, may continue to bear rates of interest of up to 21 percent per year after May 14, 1987.

(B) *18 percent maximum rate.* Effective May 15, 1987, a Federal credit union may extend credit to its members at rates not to exceed 18 percent per year on the unpaid balance inclusive of all finance charges.

(C) *Expiration.* After March 9, 1993, or as otherwise ordered by the NCUA Board, the maximum rate on Federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii) (A) and (B) of this section, on loans and line of credit balances existing on or before March 9, 1993.

* * * * *

[FR Doc. 91–18975 Filed 8–8–91; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Reloadable Tube Aerial Shell Fireworks Devices; Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: The Commission is amending its fireworks regulations in order to ban reloadable tube aerial shell devices with shells larger than 1.75 inches in outer diameter.[1] Requirements currently enforced by the Commission do not adequately address the risk of serious injury posed by these fireworks devices. No voluntary standard relating to the risk of injury has been implemented, benefits of the regulation bear a reasonable relationship to the costs, and the regulation imposes the least burdensome requirement that prevents or adequately reduces the risk of injury. The Commission is issuing this rule under the authority of the Federal Hazardous Substances Act.

DATES: This rule will become effective on October 8, 1991, and will apply to reloadable shell fireworks devices with shells larger than 1.75 inches in outer diameter that are imported on or after that date, except that the filing of proper objections would stay provisions to which objections are directed.

Adversely affected persons have until September 9, 1991 to file objections to this rule, stating reasonable grounds therefor, and to request a public hearing on those objections. Objections and requests for hearings must be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 420, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Susan B. Kyle, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6994.

SUPPLEMENTARY INFORMATION:

A. Background

Reloadable tube aerial shell fireworks devices (also referred to in this notice as "reloadable shell devices") typically consist of a cardboard launcher tube approximately 10 to 12 inches tall and separate shells that the user places inside of the tube. The user ignites the fuse which extends slightly above the top of the tube, and the shell is projected approximately 75 to 250 feet in the air where it bursts with another powder charge, releasing a colorful starburst. They are classified by the Department of Transportation ("DOT") as Class C common fireworks devices. Class C fireworks devices are suitable for use by consumers. These reloadable shell devices have become increasingly popular in the past three to four years. Four nominal sizes of shells are available at this time for consumer use: 1.5, 1.75, 2.0, and 2.25 inches in outer diameter. This amendment concerns only shells that are larger than 1.75 inches.

The Commission has received reports of thirty-nine incidents involving reloadable shells that have occurred since 1985. A majority of incidents in which the size of the shell was reported (23 of 31) involved shells larger than 1.75 inches. According to information from

[1] The Commission voted to issue the final rule by a 2–1 vote, with Commissioner Carol G. Dawson voting against the rule. Copies of the Commissioner's statements are available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; (301) 492–6800.

an insurance carrier, detailed investigations conducted by the Commission, and other data gathered by the Commission, the resulting injuries have been severe injuries to the facial area, particularly to eyes. Injuries have resulted in serious burns and loss or impairment of sight. (See Refs. Nos. 1 and 15.)

The Commission regulates fireworks devices pursuant to the provisions of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Under current regulations, the Commission has declared certain specified fireworks devices to be "banned hazardous substances." 16 CFR 1500.17(a) (3), (8), and (9). Additional regulations prescribe the requirements that fireworks devices not specifically listed as banned must meet to avoid being classified as banned hazardous substances. 16 CFR part 1507. Finally, additional Commission regulations prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the size and location of these warnings. 16 CFR 1500.121. Under the Commission's existing regulations, reloadable tube aerial shell fireworks devices that comply with applicable requirements are not banned hazardous substances.

On July 31, 1990, the Commission issued an advance notice of proposed rulemaking ("ANPR") discussing the hazard presented by reloadable shells larger than 1.75 inches in diameter. 55 FR 31069. The ANPR also discussed the concern that smaller shells with an explosive power exceeding that of existing 1.75 inch shells might be produced in the future to circumvent a ban based purely on size. In the ANPR, the Commission noted that injury data indicated a distinction between shells larger than 1.75 inches and shells 1.75 inches or smaller. On February 15, 1991, the Commission published a proposed rule in which it proposed to ban reloadable shells larger than 1.75 inches in outer diameter. 56 FR 6321 (1991). After investigating "explosive power," the Commission concluded that it was currently unable to link the factor of explosive power with the potential to produce injury. Thus, the Commission did not propose a restriction on explosive power.

B. Statutory Authority

This proceeding is conducted under provisions of the FHSA, 15 U.S.C. 1261 *et seq.* Fireworks are "hazardous substances" within the meaning of section 2(f)(1)(A) of the FHSA because they are flammable or combustible substances, or they generate pressure through decomposition, heat, or other means, and they "may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *." 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a "banned hazardous substance" any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means of protecting the public. *Id.* section 1261(q)(1)(B). A proceeding to promulgate a regulation classifying a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by the requirements set forth in section 3(f)–(i) of the FHSA, and by the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA") (21 U.S.C. 371(e)) made applicable by section 2(q)(2) of the FHSA (15 U.S.C. 1261(q)(2)).

The July 31, 1990, ANPR was the first step necessary to declare the specified reloadable shell devices banned hazardous substances under section 2(q)(1). See 15 U.S.C. 1262(f). The notice of proposed rulemaking continued the regulatory process in accordance with the requirements of 15 U.S.C. 1262(h). The Commission has determined to issue a final rule, and is publishing the text of the final rule along with a final regulatory analysis, *id.* section 1262(i)(1). It is also making findings required under section 3(i)(2) of the FHSA concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. *Id.* section 1262(i)(2).

C. Filing Objections Under § 701(e) of the FDCA

This proceeding is also governed by procedures established under section 701(e) of the FDCA. 15 U.S.C. 1261(q)(2). These procedures provide that once the Commission issues a final rule, adversely affected persons have a period of thirty (30) days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. If no objections are filed, the order becomes effective on the last day for objections. If objections are filed, implementation of the provisions to which the objections are directed would be stayed. Should objections be filed, the presiding officer would issue an order after the hearing, based upon substantial evidence. 21 U.S.C. 371(e). The Commission has published procedural rules that would apply to such a hearing. 56 FR 9276 (1991) (to be codified at 16 CFR part 1502).

Objections and requests for a hearing must be filed with the Office of the Secretary. They will be accepted for filing if they meet the following conditions: (1) They are submitted within the time period specified; (2) each objection is separately numbered; (3) each objection specifies with particularity the provision(s) of the regulation to which the objection is directed; (4) each objection on which a hearing is requested specifically requests a hearing; and (5) each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support thereof (failure to include this information constitutes a waiver of the right to a hearing on that objection). 56 FR 9276 (to be codified at 16 CFR 1502.6). The Commission will publish in the **Federal Register** a notice specifying any parts of the regulation that have been stayed by the filing of proper objections or, if no objections have been filed, stating that fact. *Id.* (to be codified at *id.* section 1502.7). As soon as practicable, the Commission will review any objections and requests for hearing that have been filed to determine whether the regulation should be modified or revoked, and whether a hearing has been justified. *Id.* (to be codified at *id.* section 1502.8).

D. The Product

As explained in earlier notices, this product's reloadability differentiates the devices from other products in the mine and shell category of fireworks, which typically are an integral unit with one common fuse and are designed for a single use. Approximately ten different models of reloadable shell devices with four sizes of shells are believed to be available in the market for consumer use: shells which are 1.5, 1.75, 2.0, and 2.25 inches in outer diameter.

To operate these devices the user must unwind the fuse (approximately 12.5 inches long) from around the shell, insert the shell into the launcher tube in the proper orientation, leaving a very short length of fuse (1 to 2 inches) projecting from the top of the tube, and then light the fuse. Because the fuse must be lit from the top of the tube, some part of the user's body may remain over the firing path of the device when it is launched. Additionally, the length of the fuse (10 to 16 inches rather than 1 to 2 inches typical of other fireworks devices) may create a false impression that the fuse will burn for a significantly longer time. (See Ref. No. 3.) The fuse

consists of two different types of fuse joined together; a one to two inch length of relatively slow burning fuse, known as "safety fuse," that ignites a very fast burning fuse, known as "quickmatch," which in turn ignites the lift propellant inside the shell.

Annual U.S. sales of reloadable shells from 1987 to 1989 are estimated to be between 15 and 22 million units. Approximately 3.5 million of these shells (roughly 15% of the 1989 total) are larger than 1.75 inches. Eight to ten companies export reloadable shells from China to the United States. The largest trading companies each market three or four brands of reloadable shells. Other firms market a single brand. One dominant brand among large reloadable shells accounts for the great majority of all 2.25 inch devices. There are approximately one hundred U.S. importers of reloadable shell devices, almost all of whom market both reloadable shells larger than 1.75 inches and smaller reloadable shells. Retail prices for reloadable shell devices vary greatly, ranging from about $10 to over $40. The estimated average retail price of a single device (typically including either six large shells or twelve small ones) is approximately $20. Prices appear to vary regionally. (See Ref. No. 2.)

Industry representatives have reported that approximately 42 million of the small (1.5 inch and 1.75 inch) shells were shipped to the United States from 1987 to 1989, while approximately 5 million of the large (2.0 inch and 2.25 inch) shells were imported during this time period. Shipments for 1989 are estimated at about 18.5 million small and 3.5 million large shells. (See Refs. Nos. 5 and 6.)

Other products exist which retailers and consumers could substitute for reloadable devices using shells larger than 1.75 inches once the ban becomes effective. In addition to reloadable shell devices using shells 1.75 inches and smaller, there are non-reloadable aerial devices which provide either single or multiple shots—sometimes up to 100 per device. Such non-reloadable devices are sold already assembled, with the fuse extending from the bottom of the tube rather than from the top, so that the user does not have to place the shell inside of the launcher tube. In addition, some types of fireworks devices, known as missiles, are also available for home use and have fuses that light from the bottom. The prices of all of the known substitute products vary within the same approximate range ($5 to over $40) as the prices of reloadable shell devices. (See Ref. No. 2.)

E. Risk of Injury

The Commission has received reports of thirty-nine incidents reported to have involved reloadable shells that have occurred since 1985. The Commission has performed in-depth investigations ("IDI's") in twenty of these cases. Information concerning the other incidents is less complete. Many of these thirty-nine incidents were reported, at the Commission's request, by the major insurance carrier for the fireworks industry. Of the thirty-nine incidents, nineteen reportedly involved 2.25 inch shells, three involved 2.0 inch shells, one involved a 1.75 inch shell, and seven involved 1.5 inch shells. One case involved a shell that was either 2 or 2.25 inches in diameter. In eight cases the size of the shell was not known. (See Refs. Nos. 1 and 15.)

The majority of incidents resulted in serious facial and eye injuries. Fourteen of the twenty investigated incidents reportedly involved eye injuries; eight of these resulted in loss of any eye. Other injuries included burns, facial lacerations and disfigurement, and loss of teeth. (See Refs. Nos. 1, 7, and 15.)

The staff reviewed sixteen of these investigations to identify injury scenarios. (Information in one of the investigated cases was insufficient to be included in the staff's analysis, and three of the investigations were not completed until after the staff's review of injury scenarios.) In ten of these sixteen investigated cases the shell launched earlier than the victim had expected. The actual time between lighting the fuse and launch is unknown. Several victims said that they expected to have more time to get away because of the length of the fuse and because their experience of previously firing shells led them to believe they would have more time to get away. In one of these cases, the shell reportedly launched before the operator lit the fuse, the device tipped over and an onlooker standing 10 feet away was struck in the face by the shell. (See Ref. No. 3.)

In three cases, the victims were injured when the shell exploded in the launch tube. One of these incidents involved the victims holding the tube while firing the shell, resulting in a hand injury. In one case, the shell exploded immediately upon leaving the launch tube. It is unclear, however, whether the shell actually exploded or the tube tipped directing the shell toward the victim. In one case, the victim was injured when, after waiting "one minute," he went back to check the device and was struck in the face. In one case, the victim held the shell in his hand while lighting the fuse, then put it into the tube. (See Ref. No. 3.)

After examining the IDIs, the Commission staff noted several patterns associated with the incidents. Two primary factors were (1) the position the victims appeared to use when lighting the fuse which placed their face near or over the launcher tube and (2) inconsistency in fuse burn time. In contrast to non-reloadable shell devices that have a fuse located at the base of the device, with reloadable shells the user must place the shell inside of the tube with the end of the fuse extending out of the launch tube. The Commission staff observed several individuals who were simulating lighting the fuse of a reloadable shell device. These individuals bent at the waist and squatted with the knees bent only enough to reach the fuse. If a victim used this same position he/she would be placed in a forward leaning pose with the head very near or over the tube. The length of the fuse may contribute to the risk of injury. The long fuse gives the impression that ample time exists to get away after lighting the fuse in contrast to devices with shorter fuses. This perception may lead some people to leave "slowly." The victim might not believe his (or her) body position was hazardous because the fuse length indicates ample time to get away. Additionally, previous firing of shells might have demonstrated there was time to get away; failure of the fuse to perform always as expected indicates that the fuse may also be a factor in the incidents. (See Ref. No. 3.)

The Commission's injury data indicate that fewer injuries have occurred with shell 1.75 inches or smaller than with shells larger than 1.75 inches. Of the thirty-one reported incidents in which the size of the shell is identified, twenty-three involved shells larger than 1.75 inches, while only eight incidents involved smaller shells (seven with 1.5 inch shells and one with a 1.75 inch shell). This also represents a much smaller proportion of injuries since the industry has reported to the CPSC that approximately 42 million of the smaller shell devices have been imported from 1987 to 1989, while only approximately 5 million of the larger shell (shells larger than 1.75 inches) devices have been imported during the same time period.

F. Comments Responding to the Proposed Rule

The Commission received four comments in response to the proposed rule published on February 15, 1991. All comments supported the proposed rule. The National Fire Protection

Association, a voluntary non-profit organization concerned with limiting the possibility and effect of fire, wrote that it supports the Commission's proposed ban of reloadable shells larger than 1.75 inches in outer diameter in order to reduce the risk and number of injuries to consumers from these devices.

The National Association of Consumer Agency Administrators ("NACCA"), a membership organization of approximately 150 administrators of federal, state, and local governmental consumer protection programs, wrote in support of the proposed ban. NACAA noted that based on the number and severity of injuries reported, NACAA believes that ample justification exists to ban the large reloadable shells.

A letter of support came from the American Pyrotechnics Association ("APA"), a trade association which represents approximately 80 percent of all fireworks manufacturers, importers, and distributors, and whose membership accounts for approximately 90 percent of all class C fireworks sold and used in the United States. APA agreed with the Commission's decision to drop a quantification of explosive power and it supported the proposed ban of reloadable shells larger than 1.75 inches in outer diameter.

The American Fireworks Standards Laboratory ("AFSL") confirmed its continuing support for a ban on reloadable shells larger than 1.75 inches. AFSL also stated its belief that "practical considerations together with continuing efforts of the AFSL" would address the Commission's concerns regarding the production of more powerful small shells. AFSL also repeated its support for revising the regulatory requirement for fuse burn time to extend the limit from six to nine seconds. As the Commission stated in its response to comments on the ANPR, amending the fuse burn time requirement for all shells is beyond the scope of this rulemaking.

G. Regulatory Analysis

Introduction

The Commission has determined that reloadable shell devices larger than 1.75 inches in outer diameter present a risk of serious burns and eye injuries. Accordingly, as explained earlier in this notice, the Commission is taking action under the FHSA to ban these reloadable shell devices. Section 3(i)(1) of the FHSA requires the Commission to prepare and publish with the final regulation a final regulatory analysis containing:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

15 U.S.C. 1261(i)(1).

The following discussion addresses these requirements.

Potential Benefits of a Ban

The ban of reloadable shells greater than 1.75 inches in outer diameter ("large reloadable shell devices") is intended to reduce or eliminate the risk of injury associated with the reasonably foreseeable use of such products. It is expected that the removal of large reloadable shells from the market would virtually eliminate the injuries associated with these items. Some offsetting increase in the number of injuries, due to the use of substitute Class C fireworks products available to consumers, would probably occur; however, this effect is not expected to be substantial.

An estimated 360 injuries associated with reloadable shells were treated in hospital emergency rooms during the 1990 Fourth of July season.[2] Since 1987, this holiday season has accounted for an average of about two-thirds of the total annual estimated injuries associated with all fireworks. Assuming that this proportion is roughly applicable to the reloadable shell subcategory, total injuries in 1990 may have been as high as 550.[3]

The distribution of injuries among the various reloadable shell devices is not precisely known; however, information from cases investigated by the Commission suggests that the majority may be associated with devices using large (2" and 2.25") shells. Injuries range in nature from minor hand or arm burns, for which individuals are treated and then released from hospital emergency rooms, to severe eye and face injuries that require hospitalization and may result in temporary or permanent vision loss. The range of costs associated with individual injuries is from under $1,000 to about $50,000. The total estimated annual cost to the public of injuries associated with large reloadable shells is approximately $1 million. This constitutes the maximum level of potential benefits to be derived from a ban.

Virtually no large reloadable shells are reported to have been shipped to the U.S. for the 1991 Fourth of July selling season. The discontinuation of sales of large reloadable shells may prompt some consumers to use other substitute products (e.g., small shell devices, missiles, or rockets); the risk associated with these substitutes, however, appears slight compared to large reloadable shells. Thus, benefits are not likely to be offset substantially by an increase in the use of substitutes.

Potential Costs of a Ban

The annual costs of a ban are estimated to be very low. Included are potential costs to foreign manufacturers and U.S. importers from sales losses, production changes, and inventory retrofitting, and slightly reduced market choices for consumers who purchase aerial display fireworks. Costs to each of these sectors are estimated to be slight, and are reduced to the extent that existing alternative products are perceived as adequate substitutes for large reloadable shells.

Effects on Industry

All reloadable shells marketed in the U.S. are imported from the People's Republic of China. No domestic fireworks manufacturer is known to produce these items. To comply with the ban, U.S. importers would simply discontinue shipment of large reloadable shells from Chinese trading companies and export brokers in Hong Kong. To a great extent, this has reportedly already occurred; as noted above, there have been virtually no import shipments of large reloadable shells in 1991. Some large reloadable shells may still be imported to the U.S. as Class B items for use in public displays; others are expected to be shipped to Europe or other international markets, or consumed in the Chinese home market.

Production facilities are expected to be converted to the manufacture of small-shell devices in most cases. Some production molds may have to be discarded or converted. One-time mold replacement or conversion costs to foreign manufacturers that could be attributed to the imposition of a ban are estimated at roughly $200,000. The amount and nature of hand labor that goes into reloadable shell production would probably be unaffected. The effect of a ban on overall production

[2] CPSC/Epidemiology estimate National Electronic Injury Surveillance System ("NEISS").

[3] CPSC/Economic Analysis estimate based on 1987–89 data for all fireworks.

costs for manufacturing firms is expected, therefore, to be temporary and quite small.

Manufacturers and importers would lose sales revenues from large reloadable shells; however, all of the known firms also market small-shell devices and other aerial display items that are close substitutes for large reloadable shells. Large reloadable shells account for a very small proportion of total fireworks sales for each affected firm. It is believed that sales of substitute products will make up for any revenue losses that might result from the ban, and that there would be no significant adverse impact on any one manufacturer or importer.

Some U.S. importers and distributors may have inventories of unsold large reloadable shells on or after the effective date of the ban. These reloadable shells would not be affected by the ban, and could be distributed for sale to the public, if the products were imported prior to the effective date. Manufacturers' and trading companies' inventories could not, however, be imported into the U.S. on or after the effective date; these would have to be converted to other (Class B) products, or shipped to other markets like any other new production units. Any repackaging costs to manufacturers would be sufficiently small that such costs would probably not be reflected in the form of higher prices for Class B fireworks, especially in view of the small volume of units likely to be repackaged.

It appears unlikely that significant effects on competition among marketers of fireworks devices would accompany a ban. Since all known manufacturers and U.S. importers of large reloadable shells also market small shells and other aerial display products, no economic advantage would likely be gained by any firm or set of firms (e.g., domestic manufacturers, none of which markets reloadable shells) as a result of a ban.

Effects on Consumers

The ban would limit consumer choice slightly by removing from the market an increasingly popular product. Consumers may perceive some loss of enjoyment as a result; however, other similar aerial display fireworks products would continue to be available at roughly similar prices. Reloadable shell packages vary in retail price from about $10 to over $40. Smaller shells provide somewhat less dramatic bursting effects, but provide more shells per package (usually 12 instead of 6) for about the same price. Non-reloadable single- and multi-shot missiles deliver similar pyrotechnic effects, and retail for a similarly wide range of prices.

About one-half million large reloadable shells were sold annually during the late 1980's. If the price of the largest substitutes were higher, on the average, than the price of the banned items, and consumers purchased those substitutes in sufficient numbers, total consumer expenditures for aerial display fireworks could increase as a result of a ban. As noted above, a mix of different potential substitutes may be expected to be purchased by consumers; some of these may be higher in price than large reloadable shells, while some are reportedly lower. The most likely direct substitute, small reloadable shell devices, are about the same in average price as large shells. Industry representatives believe that consumers often purchase total-dollar "baskets" of fireworks for a given occasion, and may not perceive significant differences among the various aerial display items available. Thus, the true cost to consumers of a ban in terms of retail expenditures is estimated to be close to zero.

A low level of net benefits to consumers may result from a ban of large reloadable shells. The estimated net benefits range from essentially zero to close to $1 million annually, depending on the net number of injuries avoided, and depending on the effect of product substitution on consumers' retail outlays and enjoyment of substitute products. Overall, it appears that benefits and costs associated with a ban of large reloadable shells would both be low. Although the number and total cost of serious accidents associated with the use of large reloadable shells are small, the cost to consumers of removing these articles from the market may approach zero, especially since the use of substitutes is already widespread.

Alternatives to the Ban

The Commission considered three basic kinds of alternatives to the ban. These involve: (a) Performance or design requirements in addition to or instead of specific provisions of the ban; (b) labeling as an alternative approach; and (c) the general alternative of no regulatory action on large reloadable shells. Under the no action alternative, the voluntary standard developed by the American Fireworks Standards Laboratory (AFSL) would be relied upon to provide safety to the public.

Alternative Performance Requirements

In the ANPR of July 31, 1990, the Commission stated its intention to investigate the safety of large reloadable shells and smaller shells exhibiting "equivalent explosive force." Consideration was given at the proposal stage to banning devices using smaller shells (i.e., 1.75 inches or less in outer diameter) that operated with observed kinetic energy levels above an established minimum level. A kinetic energy level of 70 joules (a unit of measurement equal to 0.738 ft-lbs. of force) was considered for this alternative.

The potential benefits of this alternative are uncertain, but would probably be somewhat greater than those associated with a ban based on shell size alone. The maximum possible additional injury-reduction benefits (i.e., the increment above the benefits of a shell-size ban) would be roughly $1 million per year, if all small shell-related injuries were attributable to the use of devices with sufficient kinetic energy levels to be banned. The relation of kinetic energy to injury potential is unclear, however; no data exist upon which to base a reliable estimate of the number of accidents that might be avoided if high-kinetic-energy small shells were also banned. Thus, the additional, or incremental, benefits associated with this alternative could be much smaller than $1 million, and could be near zero.

Costs could be slightly higher under this alternative. Manufacturers would have to effect new production controls to be sure that average kinetic energy levels of small shells were below the specification. The associated cost would probably be small; it is uncertain whether any manufacturing cost increases would be passed on in the form of higher retail prices for reloadable shells. Such costs may, however, be passed on ultimately in the form of higher fireworks prices generally. It cannot be concluded from the available information that significant net benefits would accompany this alternative.

Alternate Design/Performance Requirements

A substantial proportion of the most serious injuries reported to the Commission involved fuse burn-time variability (usually a too-quick ignition), or consumers' perceptions thereof. The Commission could have required that large reloadable shells be equipped with an improved fuse system in order to achieve a more consistent—and perhaps longer—average burn time; devices without such features would be banned. This remedy is viewed by AFSL as the most important overall safety improvement that could be made to reloadable shells. Although under the AFSL voluntary standard, the one-piece

fuse provision applies only to smaller reloadable shells, such a requirement could be made equally applicable to all sizes of reloadable shells.

Another aspect of alternate banning requirements involves a prohibition (also contained in the AFSL standard) against plastic shell materials that may break into hazardous shards upon bursting. This provision may help reduce the severity of injuries, notwithstanding any fuse requirements.

Imposing design or performance requirements under this alternative would allow large shells to stay on the market, thereby preserving the existing degree of consumer choice among aerial display Class C fireworks. One-piece safety fuses are under development in China, and are reported to be technically feasible for use in all reloadable shell devices. Safer plastics are also reportedly available that might be suitable for use in reloadable shells. Such requirements may, however, have some impact on the manufacturing cost—and average retail price—of the products. A $1.00 per unit price increase for large reloadables (probably a reasonable maximum) would result in an annual cost to consumers of about $0.5 million.

Although safer plastic shells may reduce the severity of injuries that continued to occur, a safety fuse requirement for large reloadable shells would probably not reduce the risk to the same extent as would an outright ban, even if a very effective fuse system were developed. Not all accidents associated with large reloadable shells involve fuse problems: even properly operating fuses may not eliminate those "reasonably foreseeable misuse" accidents in which victims hold lighted shells in their hands or look down the launch tube at the wrong time. It is also possible that different fuse designs would make the shells more difficult to insert in their tubes; a short-length requirement could eliminate the reloadable characteristic of the product. Further, concerns exist about quality control among fuse suppliers and about the Chinese fireworks producers' ability to assemble reloadable shells with safety fuses that operate any more reliably than present versions. Thus, higher costs and lower benefits could be associated with design or performance requirements than would be associated with a ban.

Alternate Labeling Requirements

The Commission could require that additional cautionary and safe-use labeling be placed on each product. Such labeling would be intended to address the most serious eye and facial injuries observed in the investigated cases.

Like the alternate performance or design requirements discussed above, labeling or instructional materials requirements would allow large reloadable shells to remain on the market. Potential costs to industry may be lower than under a ban, assuming that the cost of providing additional information to consumers is very low. Manufacturing costs associated with labeling—probably no more than 1–2 cents per unit—would be lower than costs associated with providing separate instructional materials, e.g., printed sheets, which may add 2–5 cents per unit.

No labeling or instructional materials requirements would result in significant increases in overall production costs. The small increases attributable to labels or instructions would probably not, given the price-competitive nature of the fireworks market, be reflected in retail price increases for reloadable shell devices. Although such costs are usually passed on to consumers eventually, these would likely be spread over firms' entire product lines over a long period of time, without noticeable effects on the price of any one item or group of items.

Existing reloadable shells carry fairly strong, specific warnings and instructions. There are not data to suggest that a significant number, if any, of the accidents that occur would likely be avoided if all large reloadable shells carried warning labels or instructions that are more detailed than they already are. It cannot be concluded that potential benefits would be greater than zero. Further, most substitutes for large reloadables generally appear to be safer; injuries would probably be reduced, on balance, as a result of the use of these substitutes. The benefits of substitute use may outweigh the potentially higher cost to consumers. Therefore, it appears that greater potential net benefits would accompany the removal of large reloadable shell devices from the market.

No Action/Voluntary Standard

The AFSL has, in consultation with CPSC officials, developed a voluntary safety standard for all reloadable shells. Among the major provisions of this standard is a 1.75 inch outer diameter limit on shell size. This standard, if universally conformed to, would essentially achieve the objective of a mandatory ban. The Commission considered whether, based on the available information, no mandatory action is reasonably necessary to reduce the risk associated with large reloadable shells. Potential product liability exposure may be a powerful incentive for manufacturers and importers to conform to the AFSL standard; in 1990, liability insurance coverage for large shells was reportedly cancelled by at least one major insurance carrier representing importers accounting for the majority of those products.

Firms accounting for an estimated 80–90% of all reloadable shells shipped in 1989 are continuing to withhold shipments of large shells in 1991 under an informal agreement with CPSC. This action is consistent with the shell size limit provision of the AFSL voluntary standard. Some imports of large shells would probably continue if the mandatory ban were not enacted, however. Consumer demand may lead importers back into the large-shell market in the U.S. despite increasing liability concerns. Thus, a lack of voluntary action by only one or two firms—a realistic possibility, according to industry representatives—may result in limited voluntary conformance to the size-restriction provision of the AFSL standard.

Industry costs associated with widespread conformance to the AFSL standard could, therefore, be somewhat lower than under a mandatory ban; potential benefits would also be somewhat lower to the extent that non-conforming (i.e., large) shells continued to be imported, principally from existing manufacturers' inventories. It is uncertain whether any net benefits to consumers would result from the no-action alternative, since the level of injury reduction could be near zero if, as is judged likely, some firms chose not to conform with some or all of the AFSL standard (it should be noted that the AFSL standard contains a number of other safety provisions, conformance to which is unknown but expected to be high). Given this uncertainty, it is not reasonable to conclude that the AFSL voluntary standard would adequately reduce the risk associated with large reloadable shells within a sufficiently short period of time.

At this time, the voluntary standard has not been implemented in that "substantial industry wide production of products that comply with the standard" has not begun. H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981).

Comments on the Proposal

A summary of the comments submitted during the public comment period and the Commission's responses is included in section F of this notice. None of these comments raised any

issues concerning the preliminary regulatory analysis.

H. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, agencies are generally required to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities, unless the head of the agency certifies that the rule will not, if promulgated, have a significant effect on a substantial number of small entities. The notice of proposed rulemaking discussed the potential effect of the proposed amendment on industry and concluded that any relative impact on importers' sales would likely be minimal. Potential effects on small firms would not be disproportionate to the effects on larger importers or domestic manufacturers. Thus, the Commission certifies that no significant adverse impact on a substantial number of small firms or entities would result from the rule.

I. Environmental Considerations

The Commission's regulations governing environmental review procedures provide that the amendment of rules or safety standards establishing design or performance requirements for products normally have little or no potential for affecting the human environment. See 16 CFR 1021.6(c)(1). As stated in the proposal, the Commission does not foresee that this amendment to the existing fireworks regulations would involve any special or unusual circumstances that might alter this conclusion. Thus, the Commission concludes that no environmental assessment or environmental impact statement is required in this proceeding.

J. Effective Date

The rule will become effective 60 days from publication of the final rule in the Federal Register and will apply to reloadable shell fireworks devices with shells larger than 1.75 inches in outer diameter that are imported on or after that date, except as to any provision that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the Federal Register. The Commission had proposed a 30 day effective date in order to allow maximum impact on fireworks importations. Since the height of the shipping season has passed, the rationale for a short effective date no longer exists.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Conclusion

For the reasons given above, the Commission concludes that reloadable tube aerial shell devices with shells larger than 1.75 inches in outer diameter are hazardous substances due to their flammability or combustibility, or because they generate pressure through heat. 15 U.S.C. 1261(f)(1)(A). These reloadable shells are banned hazardous substances because, notwithstanding cautionary labeling required under the FHSA, the degree or nature of the hazard involved in the presence or use of these reloadable shall devices in households is such that public health and safety can be adequately served only by keeping them out of interstate commerce. *Id.* section 1261(q)(1)(B).

Further, in accordance with section 3(i)(2) of the FHSA, the Commission finds that (1) a voluntary standard has been adopted but not implemented, (2) the benefits of the regulation stated below bear a reasonable relationship to its costs, and (3) the rule is the least burdensome alternative that will adequately reduce the risk of injury. *Id.* section 1262(i)(2). Thus, the Commission amends Title 16 of the Code of Federal Regulation to read as follows:

PART 1500—HAZARDOUS SUBSTANCE AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

2. Section 1500.17 is amended to add a new paragraph (a)(11) to read as follows:

§ 1500.17 Banned hazardous substances.

(a) * * *

(11)(i) Reloadable tube aerial shell fireworks devices that use shells larger than 1.75 inches in outer diameter and that are imported on or after October 8, 1991.

(ii) Findings.

(A) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(B) *Voluntary standard.* Although a voluntary standard relating to the risk of injury associated with reloadable tube aerial shells has been adopted, it has not been implemented. Thus, the Commission is not required to make findings covering the likelihood that the voluntary standard would result in elimination or adequate reduction of the risk of injury or that there would be substantial compliance with the voluntary standard.

(C) *Relationship of benefits to costs.* The Commission estimates that the removal of large reloadable shells from the market is likely to virtually eliminate the number of associated injuries, with only a slight offsetting increase in the number of injuries due to the use of substitute Class C fireworks products available to consumers. The estimated net benefits range from essentially zero to close to $1 million annually. The annual costs of a ban are estimated to be very low. Included are potential costs to foreign manufacturers and U.S. importers from sales losses, production changes, and inventory retrofitting, and slightly reduced market choices for consumers who purchase aerial display fireworks. Costs to each of these sectors are estimated to be slight, and are reduced to the extent that alternative products are perceived as adequate substitutes for large reloadable shells. Thus, the Commission finds that the benefits expected from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered several alternatives to the ban. These included: Design or performance criteria; additional or alternative labeling; inclusion of some reloadable shells 1.75 inches or smaller in the ban; and no action in reliance on the voluntary standard. The Commission determined that a ban of reloadable shells larger than 1.75 inches in outer diameter is the least burdensome alternative that would prevent or adequately reduce the risk of injury.

(*1*) Regarding design or performance criteria, the Commission considered requirements similar to those stated in the voluntary standard of the American Fireworks Standards Laboratory ("AFSL"). However, such criteria may increase the cost of the product and would not address all factors involved in the incidents. Further, concerns exist about the feasibility of criteria and quality control.

(*2*) Regarding additional or alternative labeling, the users' perception and experience concerning the amount of time available to get away may lead

them to disregard an inconsistent warning. There are no data to suggest that a significant number, if any, incidents would be avoided if large reloadable shells carried more detailed labels or instructions than they currently do. It cannot be concluded that potential benefits would be greater than zero.

(3) The Commission considered including reloadable shells that are 1.75 inches or less in outer diameter and have the "equivalent explosive power" of larger shells. A kinetic energy level of 70 joules was considered to evaluate explosive power. However, any potential benefits are uncertain since the Commission concluded that a clear relation between kinetic energy and injury potential could not be established. Also, costs could be slightly higher.

(4) The Commission also considered imposing no mandatory requirements on large reloadable shells and relying instead on the AFSL voluntary standard. However, it is uncertain whether any net benefits to consumers would result from this alternative, since the level of injury reduction could be near zero if, as is probable, some firms chose not to conform with some or all of the AFSL standard.

Dated: August 1, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland:

1. Memorandum from James Eisele, EPHA, to David Schmeltzer, AED, CA, dated October 19, 1990, Reloadable Shell Fireworks Injuries.
2. Memorandum from Dale R. Ray, ECPA, to John D. Rogers, CARM, dated November 28, 1990, entitled Regulatory Analyses of Proposed Fireworks Amendment.
3. Memorandum from Warren Mathers, EPHF, to John D. Rogers, CARM, dated October 23, 1990, entitled Reloadable Tube Aerial Shell Fireworks Incidents.
4. Memorandum from John R. Whitaker, HSHL, to John D. Rogers, CARM, dated October 19, 1990, entitled Laboratory and Field Analysis of Reloadable Shell Mortar Devices.
5. Letters dated February 22, 1990, and March 21, 1990, from the Drayton Insurance Brokers, Inc.
6. Letter dated March 10, 1990, from the American Pyrotechnics Association.
7. Memorandum from A. Esch, M.D., Health Sciences, to John D. Rogers, CARM, dated October 16, 1990, entitled Injuries Associated with Fireworks (Mortar Shells).
8. Memorandum from Warren K. Porter, Jr., Director, HSHL, to John Rogers, CARM, dated October 25, 1990, entitled Summary of the U.S. Bureau of Mines Testing Data on Reloadable Mortar Devices, and including Test Report from Bureau of Mines, entitled Evaluation of Reloadable Tube Aerial Shell Fireworks Devices.
9. Memorandum from Division of Regulatory Management, dated October 29, 1990, entitled Specific Performance Requirements for Reloadable Shells.
10. Briefing Package from John Rogers, Project Manager, to the Commission, November 13, 1990.
11. Memorandum from John Rogers, CARM, to the Commission, dated November 29, 1990, entitled Supplemental Memorandum to November 13, 1990 Reloadable Shell Fireworks Briefing Package.
12. Memorandum from John Rogers, CARM, to the Commission, dated January 14, 1991, entitled Responses to Questions Raised by Commissioners During Briefing on Reloadable Shell Fireworks Devices.
13. Memorandum from Dale R. Ray, ECPA, to John D. Rogers, CARM, dated January 23, 1991, entitled Reloadable Shell Fireworks: Changes to Draft **Federal Register** Notice of Proposed Rulemaking to Reflect Commission Vote on Kinetic Energy.
14. Memorandum from Dale R. Ray, ECPA, to Susan B. Kyle, HSHE, dated April 8, 1991, entitled Final Regulatory Analysis of Fireworks Amendment To Ban Large Reloadable Shell Devices.
15. Memorandum from Charles A. Nicholls, EPHA, to Susan Kyle, HSHE, dated April 11, 1991, entitled Reloadable Shell Fireworks.

[FR Doc. 91-18773 Filed 8-8-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the interest rates for overpayments and underpayments of Customs duties. The rates are 9 percent for overpayments and 10 percent for underpayments for the quarter beginning July 1, 1991. This notice is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of July 1, 1991-September 30, 1991, are 9 percent for overpayments and 10 percent for underpayments. These rates will remain in effect through September 30, 1991, and are subject to change on October 1, 1991.

Dated: July 31, 1991.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91-18921 Filed 8-8-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 86N-0451]

New Animal Drugs for Use in Animal Feeds; Removal of Portions of a Regulation; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that was published in the **Federal Register** of April 26, 1991 (56 FR

19263). The final rule amended the animal drug regulations by removing portions of the regulations pertaining to: (1) Butynorate (dibutyltin dilaurate) and arsanilic acid, to codify them to reflect previously approved new animal drug applications (NADA's); (2) nitarsone, which was previously codified; and (3) neomycin, phenothiazine, and piperazine, when used as sole drug ingredients in Type A medicated articles or in Type B or C medicated feeds, intended for use in food-producing animals, because none of these drugs was the subject of an approved NADA. The agency is correcting typographical errors that appeared in the preamble of the final rule and in the language amending 21 CFR 558.62. That language incorrectly revised all of paragraph (c) instead of paragraph (c)(1).

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

In FR Doc. 91-9913, appearing at page 19263 in the **Federal Register** of Friday, April 26, 1991, the following corrections are made:

1. On page 19264, in the third column, in the fourth line, "*Article of * * * Neo-Terramycin*" should read "*Article of Drug Neo-Terramycin*".

2. On page 19265, in the first column, in the last paragraph, line 10, the words "New-Drug status opinions; statement of policy" should have appeared in italic typeface; in the second column, in the last paragraph, in the fourth line from the bottom of the page, the acronym "AFCO" should read "AAFCO"; in the third column, in the first paragraph, line 5, the words "the 'FDA states'" should read "the 'FDA status'"; line 8, the words "The Feed Additive Compendium" should have appeared in italic typeface; and in the fifth paragraph, in the second line from the bottom, the words "Public Law" should be abbreviated to read "Pub. L."

§ 558.62 [Corrected]

3. On page 19268, in the third column, amendment "5.", "paragraphs (a) and (c)" are corrected to read "paragraphs (a) and (c)(1)."

Dated: August 5, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-18952 Filed 8-8-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Permit Applications, General Requirements; Hydrologic Balance; Definitions; Ponds and Sediment Control Measures; Revegetation; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval, with certain exceptions, of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment modifies several Maryland rules in the areas of definitions, permit applications, hydrologic balance, ponds and sediment control measures, revegetation, and civil penalties for the purpose of clarifying existing rules and maintaining consistency with revised Federal standards.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.12, 920.15, and 920.16.

II. Submission of Amendment

By letter of October 31, 1989 (Administrative Record No. MD-428), the Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) submitted a proposed amendment to modify the following sections of the Code of Maryland (COMAR) 08.13.09.01, 08.13.09.02, 08.13.09.23, 08.13.09.24, 08.13.09.35, and 08.13.09.41.

This proposed amendment represents the third phase of Maryland's response to a letter dated July 8, 1986, from OSM in which OSM identified areas of the State's program determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Record No. MD-351).

OSM announced receipt of the proposed amendments in the January 22, 1990, **Federal Register** (55 FR 2111-2116), and opened the public comment period and provided for a public hearing on the adequacy of the proposed amendments. The comment period closed on February 21, 1990. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated February 13, 1990 (Administrative Record No. MD-440), Maryland requested that OSM withdraw that portion of their October 31, 1989, submission that related to COMAR 08.13.09.24—Ponds and Sediment Control Measures, so that the State might make additional changes. Maryland submitted changes to COMAR 08.13.09.24 and 08.13.09.01B on March 9, 1990 (Administrative Record No. MD-443). OSM announced receipt of these new changes in the April 25, 1990 **Federal Register** (55 FR 17445-17458), and reopened the public comment period. No comments were received during the extended comment period which closed on May 25, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Maryland program.

1. COMAR 08.13.09.01B Definitions

(a) Under COMAR 08.13.09.01B(42), Maryland proposes to add the definition for "impounding structure." The language is the same as the Federal definition at 30 CFR 701.5 and, therefore, the Director finds it to be no less effective than the Federal rule.

(b) Under COMAR 08.13.09.01B(63), Maryland proposes to add the definition for "permanent impoundment." The language is the same as the Federal definition at 30 CFR 701.5 and, therefore,

the Director finds it to be no less effective than the Federal rule.

(c) Under COMAR 08.13.09.01B(81), Maryland defines a "sedimentation pond" as a primary sediment control structure used to allow sediment to settle out. The Director finds that the proposal is no less effective than the Federal definition at 30 CFR 701.5 which states that the structure is used to remove solids from water.

(d) Under COMAR 08.13.09.01B(94), Maryland proposes to add the definition for "temporary impoundment." The language is the same as the Federal definition at 30 CFR 701.5 and, therefore, the Director finds it to be no less effective than the Federal counterpart.

2. COMAR 08.13.09.02K General Requirements for Permit Applications

(a) *Use of terms.* In COMAR 08.13.09.02K(1), Maryland is deleting the term "mine plan area" and replacing it with "permit" [area]. The revised rule is substantively the same as that of 30 CFR 779.11. Therefore, the Director finds it to be no less effective than its Federal counterpart.

(b) *Ground-water hydrology.* Maryland proposes to revise COMAR 08.13.09.02K(2)(c) to require that specific baseline groundwater hydrology information furnished by the applicant must be in sufficient detail to assist in determining the Probable Hydrologic Consequences (PHC) of a proposed operation. In addition to the ground water information requirements of 30 CFR 780.21(b)(1), the State rule also requires information on sulfates, acidity and alkalinity. Therefore, the Director finds the proposal to be no less effective than the Federal rule.

(c) *Surface-water hydrology.* Maryland proposes to revise COMAR 08.13.09.02K(2)(d) to require that specific baseline surface water hydrology information must be furnished by the applicant in sufficient detail to assist in determining the PHC of an operation. In addition to the surface water requirements of 30 CFR 780.21(b)(2), the Maryland proposal also requires a water analysis for sulfates. Therefore, the Director finds the revision to be no less effective than the Federal rule.

(d) *Geologic information.* Maryland proposes to revise COMAR 08.13.09.02K(2)(e) to require the applicant to furnish specific geologic information for the permit and adjacent area in sufficient detail to assist in the determination of the PHC of a proposed operation. The revised rules are substantively identical to the provisions of the Federal counterpart at 30 CFR 780.22. Therefore, the Director finds the revision to be no less effective than the Federal rule.

(e) *Water quality and quantity.* Maryland proposes to revise COMAR 08.13.09.02K(2)(f) by requiring that the PHC furnished be based upon the required baseline information. It allows the use of modeling, interpolation, or statistical techniques, and requires that PHC determinations include findings whether adverse impacts occur within, or adjacent to the permit area. These requirements are substantively identical to the Federal rules of 30 CFR 780.21 (b)(3) and (f) (1), (2), and (3). Although the proposed revision does not contain a separate specific requirement for a review by the regulatory authority to determine if permit revisions need new PHC data as required by paragraph (f)(4) of the Federal rule, the State rule at COMAR 08.13.09.08B(2)(b) provides that an application for permit revision is subject to the general permit application requirements of COMAR 08.13.09.02, including the PHC determination requirements of subsection K(2)(f). When read together with COMAR 08.13.09.08B(2)(b), the Director finds the proposal to be no less effective than the Federal rule.

(f) *Alternative water source information.* COMAR 08.13.09.02K(2)(g) is revised to require information on water availability and alternative water sources if PHC determination indicates contamination, diminution or interruption of a water source. Since the revision contains the same language as 30 CFR 780.21(e), the Director finds it to be no less effective than the Federal rule.

(g) *Cumulative hydrologic impact information.* Maryland proposes to revise COMAR 08.13.09.02K(2)(h) to require that hydrologic and geologic information for assessment of probable cumulative hydrologic impact of the proposed operation and all anticipated mining on the cumulative impact study area designated by the MDBOM be furnished, if required by MDBOM, and the necessary information is available from appropriate Federal or State agencies. Further, the proposal provides that if the information is not available from such agencies, the applicant may gather and submit the required information as part of the permit application. While the proposal does not contain a provision similar to 30 CFR 780.21(c)(3) which does not allow approval of a permit until the necessary hydrologic and geologic information is made available to the regulatory authority, Maryland explained (Administrative Record No. MD–463) that the requirement that the Bureau not issue a permit until the permit application complies with all requirements is contained on COMAR 08.13.09.05A(1). That section provides that "a permit may not be approved unless the Bureau finds, in writing, on the basis of information set forth in the application, or information otherwise available and documented in the approval notice * * * that * * * the permit application complies with all requirements of the Regulatory Program." Maryland further stated that it has always interpreted the general requirement of .05A(1) as applying to the permit application hydrologic and geologic information requirements of COMAR 08.13.09.02. When read together with COMAR 08.13.09.05A(1), the Director finds the proposal to be no less effective than the Federal rule.

(h) *Water quality sampling and analysis.* Maryland proposes to add COMAR 08.13.09.02K(3) to require the methodology for water quality sampling and analysis be conducted according to either the 15th edition of "Standard Methods for the Examination of Water and Wastewater," or the methology delineated in 40 CFR parts 136 and 434. These requirements are the same as in 30 CFR 780.21 (a) and (d). Therefore, the Director finds the State revision to be no less effective than the Federal rule.

3. COMAR 08.13.09.020 Hydrologic Reclamation Plan

(a) *Maps and cross-sections.* Maryland proposes to amend COMAR 08.13.09.020(12) to require a reclamation plan that includes maps and cross-sections indicating the measurers to be taken during mining and reclamation through bond release to protect the environment, meet State and Federal water quality laws and protect the rights of water users. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterpart.

(b) *Drainage water.* Maryland proposes to revise COMAR 08.13.09.020(13) to require control or treatment of surface water and ground water drainage into, through and out of the permit area during the life of the permit to avoid acid or toxic drainage and prevent additional suspended soils to stream flow. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterpart.

(c) *Adverse hydrologic consequences.* Maryland proposes to require a plan in COMAR 08.13.09.020(14) to address

adverse hydrologic consequences identified in the PHC determination which would include preventive and remedial measures. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterparts.

(d) *Permit area.* Maryland is changing the term "mine plan area" to "permit area" in COMAR 08.13.09.020(15). This proposed language is substantively the same as that contained in the Federal counterpart at 30 CFR 780.21(h). Therefore the Director finds it to be no less effective than the Federal rule.

(e) *Water monitoring based on PHC.* Maryland proposes to revise COMAR 08.13.09.020 (16) and (17) to require a plan for monitoring ground water and surface water based upon the PHC determination and the analyses of all baseline hydrologic, geologic, and other information provided in the application to determine the impacts of the operation on the hydrologic balance. Although the proposed revision at COMAR 08.13.09.020(17) does not require that the plan provide for monitoring the parameters for effluent limitations of the Bureau's counterpart to 40 CFR Part 434, as required by 30 CFR 780.21(j)(1), the State explained (Administrative Record No. MD–458B) that the requirements are prescribed by the State's performance standards at COMAR 08.13.09.23D(3). The Director has determined that, when read together with 23D(3). The Director has determined that, when read together with 23D(3), the proposal is no less effective than its Federal counterpart.

4. COMAR 08.13.09.23 Hydrologic Balance

(a) *Water monitoring plan.* Maryland proposes to revise COMAR 08.13.09.23D(1) and 08.13.09.23E(1) to require that ground and surface water monitoring be conducted according to an approved plan. Since the language is substantively identical to 30 CFR 816.41(c)(1) and 816.41(e)(1), the Director finds the revisions to be no less effective than the corresponding Federal rules.

(b) *Water monitoring frequency.* Maryland proposes to revise COMAR 08.13.09.23D(2) and 08.13.09.23E(2) to establish frequency of monitoring. The revisions would also require the operator to immediately take appropriate action and notify the MDBOM if an analysis of any ground water sample indicates noncompliance with a permit condition. In addition to containing language substantively identical to that of 30 CFR 816.41(c)(2) and 816.41(e)(2), the revisions would also require minimum sampling intervals during each quarter. Therefore, the Director finds the revisions to be no less effective than the Federal rules.

(c) *Monitoring parameters.* In COMAR 08.13.09.23D(3) and 08.13.09.23E(3), Maryland proposes to require specific minimum parameters be monitored at each monitoring location. Since the proposals not only include substantively the same language as that of 30 CFR 780.21(i)(1) and 780.21(j)(2)(i), but also impose additional parameters to be monitored beyond those specified in the Federal rule, the Director finds the proposals to be no less effective the Federal rule.

(d) *Monitoring discharges from permit area.* Maryland proposes to add a requirement at COMAR 08.13.09.23E(4) that the permittee submit proof of filing forms for NPDES reporting requirements for the permit area; that discharges from the permit area be monitored in accordance with NPDES permits issued by the Maryland Department of Environment; and that in those cases where analytical units of sample collections indicate noncompliance with a permit condition or applicable standard, the operator shall notify MDBOM and immediately take action provided in regulations COMAR 08.13.09.020 (12), (13), (14) and 08.13.09.05D(3). There is no direct Federal rule counterpart, but the requirement for monitoring discharges from the permit area is not inconsistent with the permitting requirements of section 516 of SMCRA. Therefore, the Director finds this proposal to be no less effective than the Federal rules.

(e) *Duration of surface water monitoring.* Maryland proposes to add a provision by COMAR 08.13.09.23E(5) that would require surface water monitoring through mining and reclamation until bond release, or until certain other specified requirements are met. The proposal would allow monitoring to cease if an operation is shown to minimize disturbances to the hydrologic balance in the permit and offsite areas. Maryland stated that because mining operations under paragraph COMAR .23E(4) are subject to separate NPDES monitoring requirements imposed by the Maryland Department of Environment, the NPDES monitoring would not necessarily be curtailed should SMCRA related monitoring cease (Administrative Record No. MD–458B). The Maryland rule is substantively the same as 30 CFR 816.41(e)(3) except the Federal rule additionally requires a demonstration that the operation prevented material damage to the hydrologic balance outside the permit area. Maryland's proposal fails to provide for such a demonstration. Therefore, the Director is requiring Maryland to amend its program to correct this omission.

(f) *Transfer of Wells.* Maryland proposes to revise COMAR 08.13.09.23I(1) by inserting the phrase, "and in accordance with State and local laws" at the end of the first sentence as an added requirement pertaining to the transfer of a prospect or monitoring well for further use as a water well. Since the language would impose substantively the same requirement for management of wells as 30 CFR 816.41(g), the Director finds the revision to be no less effective than the Federal rule.

(g) *Discharge of water.* Maryland proposes to revise COMAR 08.13.09.23J(1) by including the phrase, "and prevent material damage outside the permit area" among the justifications for allowing the discharging of water into an underground mine. Since the added language is the same as that found in 30 CFR 816.41(i), the Director finds the revision to be no less effective than its Federal counterpart.

5. COMAR 08.13.09.24A Ponds and Sediment Control Measures

Maryland proposes to add subsection A(6) to require that all water accumulated in any pit be removed and the pit maintained in a dewatered condition whenever water quality or spoil stability is affected or prior to cessation of mining activities. While there is no direct Federal counterpart to this proposal, the Director finds it to be not inconsistent with the requirements of SMCRA and the Federal regulations.

6. COMAR 08.13.09.24C Diversion Design

Maryland proposes to add COMAR 08.13.09.24C(2)(f) to require that diversions be designed to minimize adverse impacts to the hydrologic balance, to prevent material damage and to assure the public safety. Since the proposed language is substantively the same as that of 30 CFR 816.43(a)(1), the Director finds it to be no less effective than its Federal counterpart.

7. COMAR 08.13.09.24D Stream Channel Diversions

(a) *Diversion of perennial and intermittent streams.* Maryland is revising paragraph (1)(a) to allow diversions for perennial and intermittent streams if there is a finding that the diversion will not adversely affect the water quality and related environmental resources of the stream. Since the revised language would be substantively

the same as that contained in 30 CFR 816.43(b)(1), the Director finds the revision to be no less effective than its Federal counterpart.

(b) *Certification.* Maryland proposes in paragraph (2)(c) to add the requirement that design and construction of stream channel diversions be certified by a qualified professional engineer as meeting the performance standards and design criteria of the regulatory program. Since the proposed language is substantively the same as that of 30 CFR 816.43(b)(4), the Director finds it to be no less effective than its Federal counterpart.

8. COMAR 08.13.09.24F Siltation Structures

(a) *Definitions.* Maryland proposes in COMAR 08.13.09.24F(1) to add the definitions for "siltation structure," "disturbed areas" and "other treatment facilities." Since the proposal has identical language as the Federal program at 30 CFR 816.46(a) (1), (2), and (3), the Director finds the proposal to be no less effective than the Federal rule.

(b) *General requirements.* Maryland proposes to add COMAR 08.13.09.24F(2) (a) through (g) as the general requirements for siltation structures.

(i) Paragraph (2)(a) would require use of best technology available in order to prevent additional contributions of suspended solids to runoff or streamflow outside the permit area. Since the proposed language is substantively the same as in 30 CFR 816.46(b)(1), the Director finds the proposal to be no less effective than its Federal counterpart.

(ii) Paragraph (2)(b) would require all surface drainage from the disturbed area to be passed through a siltation structure before leaving the permit area, except as provided in paragraph (G)(1)(d). The reference to paragraph (G)(1)(d) is incorrect and should be proposed paragraph F(5), "*Exemptions.*" Maryland has acknowledged the error and agreed to correct the reference (Administrative Record No. MD–463). This corrected proposal would allow an exemption to the requirement if the total area disturbed is small, and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary to meet effluent limitations and applicable State and Federal water quality standards for receiving waters. With the understanding that Maryland will correct the erroneous reference prior to promulgating amended regulations, the Director finds the proposal to be no less effective than its Federal counterpart at 30 CFR 816.46(b)(2).

(iii) Paragraph (2)(c) would require that siltation structures be built before beginning surface mine activities and that upon construction the structures shall be certified by a qualified registered professional engineer. Since the proposed language is substantively the same as 30 CFR 816.46(b)(3), the Director finds the proposal to be no less effective than its Federal counterpart.

(iv) Paragraph (2)(d) would require that any siltation structure which impounds water be designed, constructed and maintained in accordance with sections .24G and .24H of the Maryland program. Since the proposed provision is substantively the same as 30 CFR 816.46(b)(4), the Director finds the proposal to be no less effective than its Federal counterpart.

(v) Paragraph (2)(e) would require that any siltation structure be maintained until removal is authorized by the Bureau, and in no case removed if augmented seeding occurred within the last two years. Since the proposal is substantively the same as 30 CFR 816.46(b)(5), the Director finds the proposal to be no less effective than its Federal counterpart.

(vi) Paragraph (2)(f) would require that when a siltation structure is removed, the area be regraded and revegetated in accordance with the approved reclamation plan. Since the proposed language is substantively the same at 30 CFR 816.46(b)(6), the Director finds the proposal to be no less effective than the Federal rule.

(vii) Paragraph (2)(g) would clarify that design, construction and maintenance of any siltation structure does not relieve the person responsible from compliance with applicable effluent limitations. There is no corresponding Federal rule, but the proposed language does not conflict with the general hydrological standards of section 515(b)(10)(B) of SMCRA. Therefore, the Director finds that proposal is not inconsistent with the requirements of SMCRA and the Federal regulations.

(c) *Sedimentation ponds.* Maryland proposes new sedimentation pond requirements at COMAR 08.13.09.24F(3) (a) through (c).

(i) Paragraph (3)(a) would require that sedimentation ponds be designed, constructed and maintained in accordance with section .24G and .24H of this regulation. While there is no Federal counterpart to this proposal, the Director finds it to be not inconsistent with the requirements of SMCRA and the Federal regulations.

(ii) Paragraph (3)(b) would require that sedimentation ponds be located as near as possible to the disturbed area and out of perennial streams unless approved by the MDBOM. Since the proposed language is substantively the same as 30 CFR 816.46(c)(1)(ii), the Director finds the proposal to be no less effective than its Federal counterpart.

(iii) Paragraph (3)(c) would require that sedimentation ponds be designed, constructed and maintained to: (i) Provide a minimum storage volume of 67 cubic yards per acre of drainage area to the pond; (ii) provide adequate detention time; (iii) contain or treat a ten-year precipitation event as approved by the MDBOM; (iv) provide a dewatering device adequate to maintain the detention time; (v) minimize short circuiting; and (vi) provide removal of sediment to maintain 60 percent of the sediment storage volume. The proposed language of paragraphs (3)(c) (ii), (iii) and (v) is substantively the same as 30 CFR 816.46(c)(1)(iii) (B), (C) and (E), respectively. The proposed rule at paragraph (3)(c)(i) would require 67 cubic yards of storage volume per acre while 30 CFR 816.46(c)(iii)(A) requires "adequate" storage volume. The proposed language of paragraph (3)(c)(iv) would allow alternative positioning of a dewatering device adequate to maintain the prescribed detention time while § 816.46(c)(iii)(D) merely requires a dewatering device adequate to maintain the prescribed detention time. Proposed paragraph (3)(c)(vi) would require sediment removal to maintain 60 percent of the storage volume while § 816.46(c)(iii)(F) requires removal to maintain an adequate volume. The proposed language of paragraph (3)(c)(iv) restricts the location of the dewatering device to an elevation no lower than the maximum elevation of the sediment storage volume, unless approved by the Bureau. The restriction on the location of the dewatering device is being imposed in order to improve the efficiency and effectiveness of the device and to enhance removal of water storage resulting from inflow. The Director finds the proposal to be no less effective than its Federal counterpart.

(d) *Other treatment facilities.* Maryland proposes in COMAR 08.13.09.24F(4) to require that other treatment facilities be designed in accordance with the applicable requirements of this section and to contain or treat the 10–year, 24–hour precipitation event unless a lesser design event is approved by the MDBOM. Since the proposed language is substantively the same as 30 CFR 816.46(d), the Director finds the proposal to be no less effective than its Federal counterpart.

(e) *Exemptions.* Maryland proposes to add COMAR 08.13.09.24F(5) which would provide that exemptions to the requirements of this section may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary to meet effluent limitations in this regulation. The proposed language is substantively the same as 30 CFR 816.46(e). Therefore, the Director finds the proposal to be no less effective than its Federal counterpart.

9. COMAR 08.13.09.24H Impoundments

Maryland proposes new language for the permanent and temporary impoundment rules and is changing the section name to "Impoundments."

(a) *General requirements.* Maryland proposes to add subsection COMAR 08.13.09.24H(1) (a) through (l) as the general requirements for impoundments. COMAR 08.13.09.24H(1) requires that impoundments (a) be designed and constructed so that the minimum elevation at the top of the settled embankment will be one foot above the water surface in the pond with the emergency spillway flowing at design depth; (b) be designed and constructed so the constructed dam height is at least five percent over design height to allow for settlement; (c) be designed and constructed to ensure that all perimeter slopes are stable, are not steeper than 2:1, and are protected against erosion; (d) be designed and constructed so the crest of the emergency spillway is a minimum of one foot above the crest of the principal spillway; (e) comply with COMAR 08.05.03.05 if the embankment is more than 15 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway; (f) be revegetated immediately upon completion of construction; (g) have embankment slope protection against surface erosion and damage due to sudden drawdown; (h) have vegetated embankment faces except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices; (i) be designed by or under the supervision of a registered professional engineer (RPE) using current, prudent, engineering practices and design criteria, and certified by a RPE; (j) be inspected during construction under the supervision of and certified after construction by a registered professional engineer; (k) be routinely maintained during mining operations; and, (l) be designed and constructed in accordance with U.S. Soil Conservation Service Practice Standard 378 "Ponds," if impoundments do not meet the size or other criteria of 30 CFR 77.216(a) and are located where failure would not be expected to cause loss of life or serious property damages.

Paragraph (a) provides for a minimum freeboard of 1 foot as opposed to 30 CFR 816.49(a)(4) which requires impoundments to have adequate freeboard. Maryland stated that a minimum freeboard of 1 foot is provided for in U.S. Soil Conservation Service Practice Standard 378, "Ponds," October, 1978, and is the standard used nationwide to ensure adequate freeboard on ponds to prevent overtopping by waves or increases in storage volume (Administrative Record No. MD–463). Paragraphs (b), (c), and (d) provide for specific design criteria while 30 CFR 816.49(a)(2) allows for any design criteria that may be established by the regulatory authority. Paragraph (e), for which there is no general Federal counterpart, requires compliance with regulations of the State's Water Resources Administration of the Department of Natural Resources (dealing with dams and reservoirs) when the embankment is more than 15 feet in height. The requirements imposed by the referenced regulation in connection with the construction, reconstruction, repair or alteration of a dam or reservoir provide a further level of compliance review for larger-type embankments not required by SMCRA or the Federal regulations.

Paragraph (f), for which there is no direct Federal counterpart, requires that impoundments be vegetated immediately upon completion of construction. This provision is consistent with the general contemporaneous reclamation requirements of 30 CFR 816.100.

The provisions of paragraphs (g), (h), and (l) are substantively the same as those contained in 30 CFR 816.49(a) (6), (7), and (3) respectively.

Paragraphs (i) and (j) are similar to the provisions of 30 CFR 816.49(a)(2) and (a)(10), respectively, except that the State proposals do not require that the registered professional engineer, who designed and certified the impoundment, and inspected the impoundment during and after construction, be experienced in the design and construction of impoundments as required by the Federal rules. Maryland stated that the reference to experience in the design and construction of impoundments was deleted since the Federal regulations failed to quantify "experience" or provide standards for accepting or rejecting a registered professional engineer's (RPE) impoundment design. Further, Maryland stated that impoundment designs are reviewed by the Bureau of Mines and are not accepted, whether certified by an RPE with or without experience in the design and construction of impoundments until the Bureau is confident that the design meets the required standards set forth in the State regulations (Administrative Record No. MD–463).

Based upon the clarification provided by the State, the Director feels that the fact that certified designs are subsequently reviewed by the Bureau of Mines should be sufficient to ensure the integrity of the designs and, therefore, the lack of a requirement for experience in the design and construction of impoundments does not make proposed rule 08.13.09.24H(1)(i) less effective than the Federal rule at 30 CFR 816.49(a)(2). In addition, although proposed rule 08.13.09.24H(1)(j) does not include an experience requirement similar to the Federal rule at 30 CFR 816.49(a)(10), the proposed rule at .24H(6), as discussed in Finding 9(f), does provide that inspections during and upon completion of construction be conducted by professional engineers or specialists experienced in the construction of impoundments. However, the proposed rules do not require that the professional engineers or specialists conducting annual inspections be experienced in the construction of impoundments as required by 30 CFR 816.49(a)(10).

There is no Federal rule counterpart for the maintenance requirements of the State's proposed subparagraph (k). However, the removal of combustible material and cleaning of ditches and spillways would facilitate the inspection requirements of 30 CFR 816.49(a)(11).

On the basis of the above, the Director finds that the proposals contained in subsections H(1) (a) through (l) are no less effective than the cited Federal regulations, except to the extent that the proposals fail to require that the professional engineers or specialists conducting annual inspections be experienced in the construction of impoundments. Therefore, the Director is requiring Maryland to amend its program to correct this deficiency.

(b) *Stability.* Maryland proposes to add subsection COMAR 08.13.09.24H(2)(a), (b) and (c) (i) through (vi) to identify impoundment size and safety factor criteria. Subsection H(2) requires that impoundments: (a) meeting the size or other criteria of 30 CFR 77.216(a), or located where failure could cause loss of life or serious property damage, or a coal mine waste

impounding structure shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2; (b) not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structures and located where failure would not be expected to cause loss of life or serious property damage, shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions; (c) shall be deemed to meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage conditions if: (i) The impoundment is designed and constructed so the top width of the embankment is no less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment; (ii) the impoundment is designed and constructed so the combined upstream and downstream sideslopes of the settled embankment are not less than 5:1 with neither slope steeper than 2:1; (iii) the embankment foundation is cleared of all organic material, the surface of the area is sloped to no steeper than 1:1 and the entire area is scarified; (iv) a cutoff trench is designed and constructed prior to initiating the placement of fill material for the embankment; (v) the fill material used in construction of the embankment is free of sod, large roots and other vegetative matter, frozen soil and coal processing waste; and, (vi) the construction of the embankment begins by placing and spreading fill material at the lowest point of foundation, the fill is brought up in horizontal layers not to exceed eight inches as required to facilitate compaction, and is compacted as specified in the approved design.

Paragraph (a) is substantively the same as 30 CFR 816.49(a)(3)(i) and paragraph (b) is substantively the same as 30 CFR 816.49(a)(3)(ii).

30 CFR 780.25(c)(3) provides that for impoundments not meeting the size and other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 30 CFR 816.49(a)(3)(ii). Pursuant to the provisions of § 780.25(c)(3), Maryland has proposed, in COMAR 08.13.09.24H(2)(c), six specific criteria by which impoundments shall be deemed to meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage conditions.

OSM has reviewed the criteria specified by the State, and feels that the following clarifications are necessary to ensure that COMAR 08.13.09.24H(2)(c) is no less effective than the Federal regulations.

—The State should specify that the listed criteria apply to impoundments not meeting the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to result in loss of life or serious property damage.

—The proposal in subsection (c)(iii) states that "* * * the surface of the foundation area is sloped to not steeper than 1:1 * * *." This slope is too steep for construction of an embankment with combined side slopes of 5:1, as specified in subsection (c)(ii). If the 1:1 slope is to represent the maximum slope allowable on the flanks of the valley where the impoundment is to be constructed, then the proposed rule should so state. Also, the maximum allowable slope of the valley floor should be designated.

—To ensure impoundment stability with a static safety factor of 1.3, Maryland should develop a worse-case-scenario for the soils and slopes typical of the western Maryland coal bearing areas. The stability analysis of this scenario would be technical justification for establishing minimum guidelines for meeting the Federal requirements.

The Director finds the proposed rules in COMAR 08.13.09.24H(2) (a) and (b) to be no less effective than the Federal rules at 30 CFR 816.49(a)(3) (i) and (ii), respectively. In addition, the Director finds the proposed rule at COMAR 08.13.09.24H(2)(c) to be less effective than the Federal regulations and is requiring Maryland to amend its program to provide the cited clarifications.

(c) *Foundation.* Maryland proposes in COMAR 08.13.09.24H(3) to require that foundations and abutments for an impounding structure be stable during all phases of construction and operation and be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), the foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. Since the proposal is substantively the same as 30 CFR 816.49(a)(5)(i), the Director finds it to be no less effective than its Federal counterpart.

(d) *Spillways.* Maryland proposes in COMAR 08.13.09.24H(4) to require: (a) That an impoundment include either a combination of principal and emergency spillways or a single spillway configured, as specified in paragraph (b), which ensures design and construction to safely pass the applicable design precipitation event specified in paragraph (c) which follows; (b) that the MDBOM may approve a single open-channel spillway that is: (i) Of nonerodible construction and designed to carry sustained flows; or (ii) rock or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected; and (c) that the required design precipitation event for impoundments meeting the spillway requirements of subsections H(5) or H(6) following are: (i) for an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a 100-year, 6-hour event or larger event specified by the MDBOM; or, (ii) for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 24-hour event, or larger event specified by the MDBOM.

COMAR 08.13.09.24H(4) (a) and (b) are substantively the same as 30 CFR 816.49(a)(8) and 816.49(a)(8)(i) respectively. COMAR 08.13.09.24H(4)(c) differs from the Federal rule at 30 CFR 816.49(a)(8)(ii) only for the duration of the design events for impoundments not meeting the size or other criteria of 30 CFR 77.216(a). Maryland has elected to retain design events with a 24-hour duration. The Federal rule provides for 6-hour duration design events. OSM conducted a study of the differences in peak flows generated by events of these durations under the various conditions encountered in Maryland (Administrative Record No. MD–510). The study concluded that under most conditions the peak runoff from a 24-hour event would exceed that from a 6-hour event or that the difference was insignificant in terms of design considerations. Based upon the study, the Director believes that the State's use of the 24-hour design event rather than the 6-hour event is as stringent or more stringent than the corresponding Federal requirement.

Accordingly, the Director finds the proposed rules at .24H (a), (b), and (c) are no less effective than the Federal counterparts at 30 CFR 816.49(a)(8)–(8)(ii).

(e) *Other qualifying criteria.* Maryland proposes to require in COMAR 08.13.09.24H(5) that impoundments meeting the size or other qualifying criteria of 30 CFR 77.216(a) comply with 30 CFR 77.216 and this section. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall also be submitted to the MDBOM as part of the permit application. Since the proposal is substantively the same as provisions of 30 CFR 780.25(c)(2), the Director finds it to be no less effective than its Federal counterpart.

(f) *Inspections.* Maryland proposes in COMAR 08.13.09.24H(6) to require that a qualified registered professional engineer or other qualified specialist, under the direction of the professional engineer, inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments. These inspections shall be made (a) at appropriate times during construction, including: (i) Site preparation; (ii) construction of the cut-off trench; (iii) placement of the principal spillway pipe, including anti-seep collars and riser base; and, (iv) placement and compaction of fill material around the principal spillway, and (b) upon completion of construction. In addition, the State proposes in COMAR 08.13.09.24H(9) to require that an impoundment be inspected at least annually by a registered professional engineer or other qualified specialist under the direction of the RPE until removal of the impoundment or release of performance bond. The Director finds that COMAR 08.09.13.24H(6), when read together with the annual inspection requirement of proposed COMAR 08.09.13.24H(9) is substantively the same as and, therefore, is no less effective than the Federal requirement at 30 CFR 816.49(a)(10)(i).

(g) *Certification.* Maryland proposes to add COMAR 08.13.09.24H(7) that would require upon completion of construction that a certification statement and an as-built drawing shall be submitted for each impoundment and impounding structure. The as-built drawing shall show the approved design and any modification or minor changes. The certification statement shall be signed and sealed by a registered professional engineer, registered in the State of Maryland and shall certify that: (a) The impoundment and impounding structure has been constructed in accordance with the plans and specifications in the approved permit; (b) observations and measurements were made at appropriate times during and following construction by a registered professional engineer or a qualified person experienced in the design and construction of impoundments and impounding structures acting as a representative and reporting directly to the registered professional engineer; (c) the completed impoundment and impounding structure meets the safety requirements of safe engineering practices, the regulatory program and the design approved in the permit application; and (d) modifications made during construction meet the requirements of the regulatory program.

30 CFR 816.49(a)(10)(ii) provides that after each inspection required in 30 CFR 816.49(a)(10)(i), a qualified professional engineer, or qualified registered professional land surveyor, shall promptly provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

The Director finds the proposal to be as effective as its Federal counterpart, except to the extent that the proposal fails to require a certified report after each inspection conducted during and upon completion of construction, and to the extent the proposal fails to require that such certified reports contain the specific information set forth in the Federal counterpart at 30 CFR 816.49(a)(10)(ii). The Director is requiring Maryland to amend its program to correct these deficiencies.

(h) *Color photographs.* Maryland proposes in COMAR 08.13.09.24H(8) that the MDBOM may require color photographs to be taken at the appropriate times specified in COMAR 08.09.13.24H(6) and submitted with the certification statement. There is no direct Federal rule counterpart, but the requirement for photographs is not inconsistent with the general certification requirements of 30 CFR 816.49. Therefore, the Director finds this proposal to be no less effective than the Federal rules.

(i) *Annual inspection.* Maryland proposes in COMAR 08.13.09.24H(9) to require that: (a) An impoundment be inspected at least annually by a registered professional engineer or other qualified specialist under the direction of the registered professional engineer until removal of the impoundment or release of performance bond; and, (b) after each annual inspection the registered professional engineer submit to the MDBOM a certified report that the impoundment has been maintained in accordance with the approved plan and this regulation. The report shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, and existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A copy of the report shall be retained at or near the mine site.

The Federal rule at 30 CFR 816.49(a)(10)(i) requires inspections to be made regularly during construction, upon completion of construction, and annually thereafter. As discussed in Finding 9(f) herein, the Director finds the proposed requirement for an annual inspection when read together with proposed COMAR 08.13.09.24H(6) which requires inspections during, and upon completion of construction, is no less effective than the Federal rule. As discussed above in Finding 9(g), the Federal rule at 30 CFR 816.49(a)(10)(ii) requires a detailed certified report be provided to the regulatory authority after each inspection conducted during and upon completion of construction and annually thereafter. The failure of the Maryland program to require such reports during and upon completion of construction is responded to in that Finding. To the extent that Maryland's proposal at COMAR 08.13.09.24H(9)(b) relates to detailed certified reports after each annual inspection, the Director finds it no less effective than the annual reporting requirements of the Federal rule.

(j) *Examinations.* Maryland proposes in COMAR 08.13.09.24H(10) to require that impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3. Other impoundments shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions. Since this proposal is substantively the same as 30 CFR 816.49(a)(11), the Director finds it to be no less effective than the Federal rule.

(k) *Emergency procedures.* Maryland proposes to add COMAR 08.13.09.24H(11) to require that if any examination or inspection discloses that a potential hazard exists, the permittee shall immediately notify the MDBOM of the hazard and of the emergency procedures formulated for public

protection and remedial action. If adequate emergency procedures cannot be formulated or implemented, the MDBOM shall be notified immediately. The MDBOM shall then immediately notify the appropriate agencies that other emergency procedures are required to protect the public. Because the proposal is substantively identical to 30 CFR 816.49(a)(12), the Director finds it to be no less effective than the Federal rule.

(l) *Permanent impoundments.* Maryland proposes in COMAR 08.13.09.24H(12) that a permanent impoundment of water may be created, if authorized in the approved permit, based upon the following demonstration that: (a) The size and configuration of the impoundment will be adequate for its intended purposes; (b) the quality of the impounded water will be suitable on a permanent basis for its intended use, and after reclamation, will meet all applicable water quality standards; (c) the water level will be sufficiently stable and capable of supporting the intended use; (d) final grading will provide for adequate safety and access for proposed water users; (e) the impoundment will not result in diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; (f) the impoundment will be suitable for the approved post-mining land use; and (g) the vertical portion of any remaining highwall shall be located far enough below the low water line along the full extent of the highwall to provide adequate safety and access for the proposed water users. Paragraphs (a) through (f) of subsection H(12) are substantively identical to 30 CFR 816.49(b) (1) through (6). Paragraph (g) is substantively identical to 30 CFR 816.49(a)(9). Therefore, the Director finds the proposal to be no less effective than the Federal rules.

(m) *Temporary impoundments.* Maryland proposes to add COMAR 08.13.09.24H(13) that would allow the MDBOM to authorize the construction of temporary impoundments as part of a surface coal mining operation. Since the proposed language of this subsection is substantively the same as 30 CFR 816.49(c)(1), the Director finds it to be no less effective than the Federal rule.

(n) *Modification of impoundments.* Maryland proposes to add COMAR 08.13.09.24H(14) to require that plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments be submitted to the MDBOM and shall comply with the requirements of COMAR 08.13.09.24H. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety or the environment, the MDBOM shall approve the plans before the modification begins.

There is no direct Federal rule counterpart to this subsection. Its modification provisions do not conflict with the general Federal impoundment rules at 30 CFR 816.49 but for the emergency condition exception to the requirement that the State must give prior approval to plans before the modifications begin. This is a necessary exception for a situation not contemplated by the Federal impoundment rules. Therefore, the Director finds the proposal no less effective than these rules.

10. COMAR 08.13.09.24I Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities

Maryland is revising the last sentence of this subsection to read: "Before final bond release of the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities to meet the criteria for permanent structures and impoundments." However, the Federal rule at 30 CFR 816.56, in addition to containing substantively the same language, also requires that all temporary structures be removed and reclaimed before abandoning a permit area or seeking bond release. The Director finds the proposal to be as effective as its Federal counterpart except to the extent that Maryland's proposed rule does not provide for the removal and reclamation of temporary structures, and he is requiring Maryland to amend its program to correct this omission.

11. COMAR 08.13.09.35A General Requirements for Revegetation

(a) *Revegetative cover.* Maryland proposes to revise COMAR 08.13.09.35A(1) to require the permittee to establish a vegetative cover on regraded areas and on all other disturbed areas directed toward stabilizing the soil, minimizing downstream sediment and runoff damage, and establishing permanent vegetative cover compatible with approved post-mining land use (excluding roads and water areas) meeting specified performance standards. Since the language of the revision is substantively the same as in 30 CFR 816.111(a), the Director finds the revision no less effective than the Federal rule.

(b) *Reestablishing vegetative cover.* Maryland proposed to revise COMAR 03.13.09.35A(2) to require that the reestablished vegetative cover meet specified standards for compatibility; for seasonal growth characteristics; for self-regeneration and plant succession; and meet the State and Federal laws and regulations. Since the proposed language of the revision is substantively the same as in 30 CFR 816.111(b), the Director finds the revision no less effective than the Federal rule.

(c) *Exception to cover requirements.* Maryland proposes to revise COMAR 08.13.09.35A(3) to allow exceptions to paragraphs A(2)(b) and A(2)(c) when the species are necessary to get quick vegetative cover and where measures to establish permanent vegetation are included in the approved permit and reclamation plans. Since the language of the revision is substantively the same as in 30 CFR 816.111(c), the Director finds the revision to be no less effective than the Federal rule.

(d) *Exception to land use requirement.* Maryland proposes to revise COMAR 08.13.09.35A(4) to permit a waiver to the requirements of paragraphs A(1)(a), A(1)(c), A(2)(b) and A(2)(c) when a cropland post-mining land use is approved. Since the language of the revision is substantively the same as in 30 CFR 816.111(d), the Director finds the revision no less effective than the Federal rule.

12. COMAR 08.13.09.35C Plant Species Selection and Land Treatment

Maryland proposes to revise COMAR 08.13.09.35C(1) to require that all planting plans include provisions for a herbaceous cover coordinated with the proposed post-mining land use, elevation, and soil conditions, and to revise COMAR 08.13.09.35C(2) to define the treatment required for establishment of a temporary or permanent herbaceous cover. There are no direct Federal rule counterparts for these proposed revisions. However, the Director finds the proposals are not inconsistent with 30 CFR 816.100 which allows the regulatory authority to establish schedules that define contemporaneous reclamation, and 30 CFR 816.113 which describes the normal period for favorable planting.

13. COMAR 08.13.09.35D Revegetation Plan

Maryland proposes to revise COMAR 08.13.09.35D(1) to define guidelines for use in development of a revegetation plan for the selected post-mining use. There is no corresponding Federal rule. However, 30 CFR 780.18(b)(5) requires specific revegetation information and practices to be included in every

revegetation plan. The same specific revegetation plan requirements are contained in COMAR 08.13.09.02P(6). Therefore, when read in conjunction with COMAR 08.13.09.02P(6), the Director finds the proposal to be no less effective than the revegetation plan requirements of the Federal rules.

14. COMAR 08.13.09.35E Soil Stabilizing Practices

(a) *Mulching application rate.* Maryland proposes to revise COMAR 08.13.09.35E(1) to allow the MDBOM to modify the mulch and other soil stabilizing practices requirement if various factors result in conditions where a lower application rate is adequate to control erosion. Since the revision is substantively the same as 30 CFR 816.114, the Director finds the revision to be no less effective than the Federal rule.

(b) *Minimum application rate and other mulching materials.* Maryland proposes to add COMAR 08.13.09.35E(5) to set a minimum mulch application rate of 3 tons per acre, and COMAR 08.13.09.35E(6) to allow substitution of alternative mulching materials upon written request by the operator and approval by the MDBOM. There are no direct counterparts in the Federal rule at 30 CFR 816.114 governing mulching. Erosion control would still be required under COMAR 08.13.09.35E(1), which the Director is approving in Finding 14(a). The Director finds these two proposals to be not inconsistent with the requirements of SMCRA and the Federal rules.

15. COMAR 08.13.09.35F Revegetation Reports and Inspection

(a) *Backfilling and planting report.* Maryland proposes to add COMAR 08.13.09.35F(1) to require that a backfilling and planting report, including a location map, be prepared by the permittee. There are no corresponding Federal regulations or statutes dealing with preparation of a backfilling and planting report. However, COMAR 08.13.09.35F(1) does not conflict with the backfilling and revegetation requirements of the Federal program at 30 CFR 816.102 and 816.111. Therefore, the Director finds the proposal to be no less effective than the Federal rules.

(b) *Replanting deficient areas.* Maryland proposes to add COMAR 08.13.09.35F(2) to require the permittee to inspect all planted areas prior to recognized planting seasons and replant deficient areas. There are no corresponding Federal regulations or statutes. However, COMAR 08.13.09.35F(2) does not conflict with the general revegetation requirements of the Federal programs at 30 CFR 816.11. Therefore, the Director finds the proposal to be no less effective than these Federal rules.

(c) *Revegetation inspection.* Maryland proposes to revise COMAR 08.13.09.35F(3) to provide that the MDBOM and the Land Reclamation Committee make a vegetation inspection when the planted areas have survived two years after the last augmented seeding. If standards of success are met, the MDBOM would notify the operator and may reduce the amount of the bond in accordance with COMAR 08.13.09.15, Performance Bonds. If standards of success are not met, the MDBOM may order the operator to correct deficiencies. To clarify this proposal, the State has confirmed that the bond reduction referred to in this rule represents Phase II bond release, and the State rule at COMAR 08.13.09.15H(2) requires that sufficient bond be retained to ensure completion of any required revegetation (Administrative Record No. MD–539). There is no comparable Federal rule, but the Director finds the proposed rule to be no less effective than the revegetation success standards of 30 CFR 816.116 and the bond release standards of 30 CFR 800.40.

(d) *Final revegetation inspection.* Maryland proposes in COMAR 08.13.09.35F(4) to provide that the MDBOM will make a final inspection of planted areas at the end of the five-year responsibility period. It would require MDBOM to notify the permittee in writing of its approval or disapproval. On those areas approved, bond release procedures would be implemented. The MDBOM would be required to notify the permittee of reasons for disapproving revegetation areas. There are no corresponding Federal regulations or statutes dealing with notification procedures. However, COMAR 08.13.09.35F(4) does not conflict with the bond release standards of 30 CFR 800.40 or the revegetation success standards of 30 CFR 816.116. Therefore, the Director finds the proposal to be no less effective than these Federal rules.

16. COMAR 08.13.09.35G Revegetation Success Standards

(a) *Judging effectiveness of revegetation.* Maryland proposes to revise COMAR 08.13.09.35G(1) to require that success of revegetation be judged on the effectiveness of the vegetation for the approved post-mining land use, extent of cover when compared to cover occurring in natural vegetation of the area, and the general requirements of COMAR 08.13.09.35A. Success standard would be considered achieved when they are not less than 90 percent of the success standard using a 90 percent statistical confidence interval. Since the proposed success standards are substantively the same as those of 30 CFR 816.116(a), the Director finds the proposal to be no less effective than the Federal rule.

(b) *Applying standards to post-mining land use.* Maryland proposes to add COMAR 08.13.09.35G(2) (a) through (f) as standards for success of revegetation.

Paragraphs (a) through (e) provide that success standards are to be applied in accordance with the individual approved post-mining land uses, and set forth the specific minimum standards to be met for each use. The standards proposed are substantively the same as those contained in 30 CFR 816.116(b) (1) through (5) except that they do not require specific consultation with and approval by state agencies responsible for administration of forestry and wildlife programs, as required by (b)(3)(i) of the Federal rule. In a letter dated July 23, 1990 (Administrative Record No. MD–463), the State explained that the Forest Park and Wildlife Service is within the Maryland Department of Natural Resources (MDNR) as is the Bureau of Mines. The Secretary of the MDNR programmatically approves post-mining land use as is prescribed under the Federal rule. Proposed paragraph (f) provides for a period of extended responsibility of not less than five years. The period shall begin with the last year of augmented seeding, fertilizing, or other work, excluding normal conservation and management practices approved by the Bureau. This proposal is substantively identical to the Federal counterpart at 30 CFR 816.116(c) (1) and (2). Therefore, the Director finds the proposal to be no less effective than the Federal counterparts.

17. COMAR 08.13.09.41 Civil Penalties: General

(a) *Use of terms.* Throughout COMAR 08.13.09.41, the terms "Violation Notice of Cease and Desist Order" are replaced with "Notice of Violation or Cessation Order" and the term "operator" is replaced by "person." The proposed terms are consistent with the use of such terms in 30 CFR parts 843, 845, and 846. Therefore, the Director finds Maryland's proposed language to be no less effective than that of the Federal program.

(b) *Penalty for creating imminent danger.* COMAR 08.13.09.41A(3) requires that civil penalties shall be assessed whenever the MDBOM issues a cessation order for a violation that creates an imminent danger to the

health and safety of the public; or is causing or can reasonably be expected to cause significant, imminent environmental harm. This proposal is substantively the same as 30 CFR 843.11(a)(1) (i) and (ii); therefore, the Director finds it to be no less effective than the Federal rules.

(c) *Worksheet.* COMAR 08.13.09.41B(2)(e) is proposed to require that a Notice of Proposed Assessment contain a worksheet showing the computation of the proposed assessment. Because the proposed worksheet requirement is substantively the same as that of 30 CFR 845.17(b), the Director finds the proposal to be no less effective than the Federal rule.

(d) *Serving the assessment.* Maryland proposes to revise COMAR 08.13.09.41B(3) to require that a "Service of the Notice of Proposed Assessment" shall be complete upon mailing in accordance with regulation 08.13.09.40H, the procedures for serving assessments. COMAR 08.13.09.41B(4) is revised to require that failure to serve any proposed assessment within 30 days of the issuance of a notice of violation or cessation order shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed (i) proves actual prejudice as a result of the delay; and (ii) makes a timely objection to the delay. Since these revisions when read in concert with COMAR 08.13.09.40H, are substantively the same as 30 CFR 845.17(b) (1) and (2), the Director finds the revisions to be no less effective than the Federal rules.

18. COMAR 08.13.09.41C Informal Review: Assessment Conference Procedures

(a) *Conference request.* Maryland proposes in COMAR 08.13.09.41C(1) a provision for allowing a person against whom a penalty has been assessed to request an assessment conference regarding the amount of penalty if the request is made within 15 days after the Notice of Proposed Assessment is served. 30 CFR 845.18(a) allows 30 days from the date an assessment is received for filing of a request for conference. The Director finds the provision to be as effective as the Federal rule at 30 CFR 845.18(a) except to the extent that the proposal allows 15 days to request an assessment conference and he is requiring the States to amend the provision to be no less effective than its Federal counterpart.

(b) *Nature and purpose of conference.* Maryland proposes in COMAR 08.13.09.41C(2) that an assessment conference be informal, be conducted by the Director of the MDBOM or his designee, and that its purpose be restricted to a discussion of the amount of penalty only. There is no direct Federal counterpart of this proposal. The Director finds the proposal is substantively the same as provisions within 30 CFR 845.18(a), (b)(1), and (b)(3) and therefore no less effective than these counterpart Federal provisions.

(c) *Timing of conference.* Maryland proposes in COMAR 08.13.09.41C(3) to require that the assessment conference be held within 60 days from the date of issuance of the notice of proposed assessment, or the end of the abatement period, whichever is later. Failure to hold the conference within this time period will not be grounds for dismissal of all or part of the proposed assessment unless assessee can prove prejudice as a result of the delay. Since the proposal has substantively the same language as that found in 30 CFR 845.18(b)(1), the Director finds the proposal to be no less effective than its Federal counterpart.

(d) *Date of conference.* Maryland proposes to add COMAR 08.13.09.41C(4) which would require posting of the date and time of the assessment conference at least 5 days before the conference, and provides that any person has the right to attend or participate in the conference. Since the proposal is substantively the same as 30 CFR 845.18(b)(2), the Director finds the proposal to be no less effective than the Federal rule.

(e) *Amount of penalty.* Maryland proposes in COMAR 08.13.09.41C(5) to provide that an assessment conference may result in an increase or decrease in the amount of the penalty. Since the proposal has substantively the same language as that found in 30 CFR 845.18(b)(3)(ii), the Director finds the proposal to be no less effective than its Federal counterpart.

(f) *Settlement agreement.* Maryland proposes in COMAR 08.13.09.41C(6) to provide that a settlement agreement may be entered at the conference under which the operator waives all further rights of appeal except as stated in the agreement. If, within 30 days, the operator defaults on the agreement, the MDBOM may enforce it or rescind it and proceed with final assessment within 30 days from the date of rescission. Since the proposal is substantively the same as 30 CFR 845.18(d), the Director finds the proposal to be no less effective than the Federal rule.

(g) *Notice of final assessment.* Maryland proposes in COMAR 08.13.09.41C(7) to require that the MDBOM send by certified mail a Notice of Final Assessment (NOFA) within 30 days of the conclusion of the assessment conference, if any, or within 30 days of issuance of the notice of proposed assessment. The notice shall contain the basis of the violation, the amount of penalty and a worksheet if the penalty has been adjusted. Also, COMAR 08.13.09.41C(8) would require that the service of the NOFA shall be complete upon mailing in accordance with COMAR Regulation 4OH. The proposals at C (7) and (8) are substantively the same as 30 CFR 845.18(c) except that the Federal rule states that a person shall be promptly served a notice while the State would require notice to be served within 30 days. The Director finds that the proposals are no less effective than the Federal counterparts.

19. COMAR 08.13.09.41D Formal Review: Hearing Procedures

(a) *Final assessment and contesting a violation.* Maryland proposes to add COMAR 08.13.09.41D(1) that would permit formal review of final penalty assessment upon submittal of an escrow deposit equal to the final assessment amount along with a request for formal review within 30 days of receipt of the NOFA. The hearing would be conducted in accordance with COMAR Regulation 08.13.09.43. The formal review of assessment may be combined with the formal review of violation if the violator has requested a formal review of the underlying violation under COMAR 08.13.09.40J and the fact of violation has not been adjudicated. Maryland is also proposing COMAR 08.13.09.41D(2) which would indicate that the fact of violation (FOV) may not be contested if no hearing to review the notice of violation (NOV) or cessation order (CO) has been requested or if the FOV has been decided in a review proceeding under COMAR Regulation .40. These provisions are similar to those of 30 CFR 845.19(a) except that the latter do not require the person to have first requested a separate formal review of the underlying violation before seeking a combined review of the violation and penalty assessment. This difference in the Maryland rule will not procedurally disadvantage such persons. The Director finds the Maryland proposal to be no less effective than the Federal rule.

(b) *Final assessment adjustment.* Maryland proposes in COMAR 08.13.09.41D(3) to permit the hearing officer to increase or decrease the final assessment at the conclusion of an adjudicatory hearing. Since the language is substantively the same as 30 CFR 845.18(b)(3)(ii), the Director finds the proposal to be no less effective than the Federal rule.

20. COMAR 08.13.09.41E Penalty Assessment Criteria

Maryland proposes to revise COMAR 08.13.09.41E(1)(a) by increasing from $1,000 to $2,000 the maximum assessment for which a violation will not be considered if it was subsequently vacated, or is still being contested or appealed by the operator. This amount is the same allowed under the Federal program in 30 CFR 845.13(b)(1) which allows up to 30 points for a history of previous violations. In the Schedule under 30 CFR 845.14, 30 points translates to $2,000. MDBOM agreed (Administrative Record No. MD–456B) to correct a typographical error by adding the words "the violation" to the beginning of the third sentence of paragraph (1)(a) in the final rule language.

In paragraphs (1)(c) and (1)(d), Maryland is replacing the term "operator" with that or "person." The corresponding Federal regulations governing the assessment of civil penalties at 30 CFR 845.13 use the more restrictive terms "person to whom the notice or order was issued" or "permittee." In COMAR 08.13.09.41E(1)(e), the maximum amount of penalty for effect of violation on reclamation is reduced from $1,500 to $500. The Federal rule at 30 CFR 845.13(b)(3)(i) assigns up to 25 points for degree of fault to a person to whom notice or order was issued for failing to correct a violation. The points equal an assessment of $500 under the schedule in 30 CFR 845.14. With the understanding that Maryland make the agreed to change to paragraph (1)(a) before promulgation of the rules, the Director finds the Maryland proposals to be no less effective than their Federal counterparts.

21. COMAR 08.13.09.41F Payment of Penalty Amount

In COMAR 08.13.09.41F(3), Maryland proposes to revise the time for refunds where appeals result in elimination or reduction of a penalty, from 15 days to 30 days. Since the language is substantively the same as in 30 CFR 845.20(c), the Director finds the revision to be no less effective than the Federal program.

22. COMAR 08.13.09.41G Individual Civil Penalties

(a) *Definitions.* Maryland proposes to define in COMAR 08.13.09.41G(1), the terms: (i) "Knowingly," (ii) "Violation, failure or refusal," and (iii) "Willfully." Since the definitions are substantively the same as the Federal definitions in 30 CFR 846.5, the Director finds them to be no less effective than the Federal rule.

(b) *Who may be assessed.* Maryland proposes in COMAR 08.13.09.41G(2) to provide that the MDBOM may assess an individual civil penalty against any corporate permittee officer, agent or director responsible for a violation, failure or refusal. Since the proposal is substantively the same as 30 CFR 846.12(a), the Director finds the proposal to be no less effective than the Federal rule.

(c) *When an assessment can be made.* Maryland proposes in COMAR 08.13.09.41G(3), that when an individual civil penalty is due to a corporate permittee, a permit violation cannot be assessed until a CO has been issued to the corporate permittee for the violation and the CO has remained unabated for 30 days. Since the proposal is substantively the same as 30 CFR 846.12(b), the Director finds the proposal to be no less effective than the Federal rule.

(d) *Criteria for determining amount of penalty.* In COMAR 08.13.09.41G(4), Maryland defines the criteria for determining the amount of an individual civil penalty to be assessed. Since the proposal is substantively the same as 30 CFR 846.14(a), the director finds the proposal to be no less effective than the Federal rule.

(e) *Limit of penalty for each violation.* Maryland proposes in COMAR 08.13.09.41G(5), that each penalty violation shall not exceed $5,000. Each day of a continuing violation may be deemed a separate violation and a separate individual civil penalty may be assessed for each day the violation, failure or refusal continues. The proposal is substantively the same as 30 CFR 846.14(b); therefore, the Director finds it to be no less effective than the Federal rule.

(f) *Notice of proposed assessment.* Maryland proposes in COMAR 08.13.09.41G(6) to require the MDBOM to serve notice or proposed individual civil penalty assessments, including an explanation of the amount to be assessed and a copy of the underlying notice of Violation or cessation order. The proposal is substantively the same as 30 CFR 846.17(a); therefore, the Director finds it to be no less effective than the Federal rule.

(g) *Final order.* Maryland proposes in COMAR 08.13.09.41G(7) that the proposed individual civil penalty notice will become a final order 30 days after service of the individual unless: (i) the individual files a petition for review within 30 days of service, or (ii) the MDBOM and involved parties agree, within 30 days of the service, to a schedule or a plan for abatement or correction of the violation. Since the language of the proposal is substantively the same as 30 CFR 846.17(b) (1) and (2), the Director finds the proposal to be no less effective than the Federal rule.

(h) *Service.* Maryland proposes to require by COMAR 08.13.09.41G(8), that service of the Notice shall be complete upon mailing in accordance with COMAR Regulation. 40H. Maryland has stated that in all cases, it is their policy that service of the notice shall be by certified mail (Administrative Record No. MD–539). Since the requirement would be in accordance with the approved Maryland program at COMAR 08.13.09.40H and consistent with 30 CFR 846.17(c), the Director finds the proposal to be no less effective than Federal program.

(i) *Absence of agreement or appeal.* Maryland proposes to require in COMAR 08.13.09.41G(9), that if a notice of proposed individual civil penalty assessment becomes a final order without a petition for review or abatement agreement, the penalty would be due upon issuance of the final order. Since the language is substantively the same as is 30 CFR 846.18(a), the Director finds the proposal to be no less effective than Federal rule.

(j) *Appeals.* Maryland proposes in COMAR 08.13.09.41G(10) to require that if an individual named in the notice of proposed individual civil penalty assessment files a petition for review, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty. The language is substantively the same as 30 CFR 846.18(b); therefore, the Director finds the proposal to be no less effective than the Federal rule.

(k) *Abatement agreement.* In COMAR 08.13.09.41G(11), Maryland proposes that upon execution of a written plan for compliance with an unabated order, an individual named in the notice may postpone payment until receipt of a final order stating that the penalty is due, or by written notice that abatement/compliance is satisfactory and the penalty is withdrawn. Since the proposed rule is substantively the same as 30 CFR 846.18(c), the Director finds the proposal to be no less effective than the Federal rule.

(l) *Delinquent payment.* Maryland proposes in COMAR 08.13.09.41G(12), that following expiration of 30 days after the issuance of a final order assessing an individual civil penalty, a delinquent penalty shall be subject to interest at the rate of 6 percent per annum. The civil

penalty is payable to the State and collectable in any manner provided by law for collection of debts. Since the language of the proposed rule is substantively the same as provisions of 30 CFR 846.18(d), the Director finds the proposal to be no less effective that its Federal counterparts.

IV. Summary and Disposition of Comments

Public Comments. The public comments period and opportunity to request a public hearing announced in the January 22, 1990, **Federal Register** (55 FR 2111–2116) ended February 21, 1990. An extended comment period announced in the April 25, 1990, **Federal Register** (55 FR 17455–17458) ended May 25, 1990. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments. Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program.

The Soil Conservation Service, Bureau of Land Management, the Mine Safety and Health Administration, and the Army Corps of Engineers all generally supported the amendment and subsequent revisions, or had no substantive comments.

V. Director's Decision

Based on the above findings, the Director is approving, with exceptions, the proposed program amendments submitted by Maryland on October 31, 1989, and modified on March 9, 1990. The Federal regulations at 30 CFR 920 codifying decisions concerning the Maryland program are being amended to implement this decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date.

As discussed in the findings listed below, the Director in not approving proposed provisions in the cited sections of the Maryland program which have been found to be less effective than the counterpart Federal regulations and he is requiring Maryland to further amend its program to correct the deficiencies identified.

Finding No.	COMAR
4(e)	08.13.09.23E(5)
9(a)	08.13.09.24H(1)(j)
9(b)	08.13.09.24H(2)(c)
9(g)	08.13.09.24H(7)
10	08.13.09.24I
18(a)	08.13.09.41C(1)

Environmental Protection Agency (EPA) Concurrence

In accordance with 30 CFR 732.17(h), OSM solicited EPA's concurrence in the approval of Maryland's program. EPA concurred (Administrative Record No. MD–471) in the State's proposed amendments as they can be implemented consistent with applicable Clean Water Act (CWA) requirements. However, EPA expressed concern that certain situations possibly related to instream treatment could result in conditions that would not assure compliance with applicable State water quality standards as required by the CWA. Specifically, COMAR 08.13.09.24F(3)(b) would provide that sedimentation ponds be located as near as possible to the disturbed area and out of perennial streams, unless approved by MDBOM. EPA's definition of waters of the United States at 40 CFR 122.2 includes perennial streams as well as intermittent and ephemeral streams. Additionally, EPA believes that the regulations of COMAR 08.13.09.24H could allow the placement of impoundments in the waters of the United States. Despite these concerns, "EPA believes that Maryland's regulations require compliance with applicable CWA requirements."

The Director acknowledges these concerns but notes that neither the cited Maryland regulations nor their Federal counterparts at 30 CFR 816.46 and 30 CFR 816.49, specifically mention instream treatment facilities. None the less, the Director is approving the cited Maryland regulations with the understanding and on the basis that they do not supersede the applicable CWA requirements.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Maryland program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Maryland of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA (30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, by OMB. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental regulations, Surface mining, Underground mining.

Dated: July 31, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended set as forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (m) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(m) The following amendments submitted to OSM on October 31, 1989, and modified and resubmitted on March 9, 1990, are approved with the exceptions noted herein, effective August 9, 1991. The approved amendments consist of the following modifications to the Maryland regulations (COMAR):

08.13.09.01B Definitions.
08.13.09.02K Description Included in Permit Application.
08.13.09.02O Hydrologic Reclamation Plan.
08.13.09.23D Ground Water Monitoring.
08.13.09.23E Surface Water Monitoring.
—Except for Subsection E(5) regarding prevention of material damage to the hydrologic balance outside the permit area.
08.13.09.23I Transfer of Wells.
08.13.09.23J Discharge of Water into an Underground Mine.
08.13.09.24A General Requirements for Ponds and Sediment Control Measures.
08.13.09.24C Diversions and Conveyance of Overland Flow and Shallow Groundwater Flow, and Ephemeral Streams.
08.13.09.24D Stream Channel Diversions.
08.13.09.24F Siltation Structures.
08.13.09.24H Impoundments.
—Except Subsection H(1)(j) regarding inspection of impoundments.
—Except Subsection H(2)(c) regarding impoundments deemed to meet a minimum static safety factor of 1.3.
—Except Subsection H(7) regarding submission of certified reports.
08.13.09.24I Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities.
—Except for failure to include removal of temporary structures.
08.13.09.35A General Requirements for Revegetation.
08.13.09.35C Plant Species Selection and Land Treatment.
08.13.09.35D Revegetation Plan.
08.13.09.35E Soil Stabilizing Practices.
08.13.09.35F Backfilling and Planting.
08.13.09.35G Standards for Success.
08.13.09.41 Civil Penalties: General.
08.13.09.41B Civil Penalties: Procedure.
08.13.09.41C Informal Review.
—Except Subsection C(1) regarding time period within which to request an assessment conference.
08.13.09.41D Formal Review.
08.13.09.41E Penalty Assessment Criteria.
08.13.09.41F Payment of Penalty Amount.
08.13.09.41G Individual Civil Penalties.

3. In § 920.16, paragraphs (b), (c), (d), (e), (f) and (g) are added to read as follows:

§ 920.16 Required program amendments.

* * * * *

(b) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.23E(5) or otherwise amend its program to be no less effective than 30 CFR 816.41(e)(3) by requiring an operator to demonstrate that the operations prevented material damage to the hydrologic balance outside the permit area, before the regulatory authority may modify surface-water monitoring requirements.

(c) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24H(1)(j) and/or 08.13.09.24H(9) to clarify that the required annual inspections of impoundments are to be conducted by professional engineers or specialists experienced in the construction of impoundments.

(d) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24H(2)(c) to clarify the engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor.

(e) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24H(7) or otherwise amend its program to be no less effective than 30 CFR 816.49(a)(10)(ii) by requiring the submission of a certified report after each inspection conducted during and upon completion of construction, and annually thereafter, containing the specific information described in 30 CFR 816.49(a)(10)(11).

(f) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24I or otherwise amend its program to be no less effective than 30 CFR 816.56 by requiring the operator to ensure that all temporary structures are removed and reclaimed before abandoning a permit area or seeking bond release.

(g) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.41(C)(1) or otherwise amend its program to be no less effective than 30 CFR 845.18(a) by allowing a period of 30 days within which a person against whom a penalty has been assessed may request an assessment conference.

[FR Doc. 91-18810 Filed 8-8-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Hampton Roads, Regulation 91-06]

Safety Zone Regulations; Chesapeake Bay, Norfolk Harbor Channel Reach, Port of Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a temporary 500 yard safety zone around those vessels anchored in positions 36-56'55"N/76-03'16"W, 36-56'14"N/76-03'08"W, 36-56'44"N/76-02'31"W, and 36-56'37"N/76-01'50"W, and around the floating pier and elevated causeway extending from the beach into Anchorage A from September 4 through October 8, 1991. The zone is needed to protect mariners in the vicinity from the hazards which may result from a military exercise. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

EFFECTIVE DATES: This regulation becomes effective at 12:01 a.m. on September 4, 1991, and terminates at 11:59 p.m. on October 8, 1991, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LT J.S. Dunphy, Project Officer, USCG Marine Safety Office Hampton Roads, telephone number (804) 441-3294.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect mariners operating in the vicinity of Thimble Shoal Channel, Hampton Roads and Norfolk Harbor Reach Channel during a military exercise.

Drafting Information

The drafters of this regulation are LT J.S. Dunphy, project officer for the Captain of the Port, Hampton Roads, and CDR S.R. Campbell, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring the regulation is a military exercise around vessels anchored in positions 36-56'55"N/76-03'16"W, 36-56'14"N/76-

03'06"W, 36–56'44"N/76–02'31"W, and 36–56'37"N/76–01'50"W, and around the floating pier and elevated causeway extending from the beach into Anchorage A from September 4 through October 8, 1991. Individuals or vessels will not be permitted within 500 yards of the vessels, floating pier, or elevated causeway. The safety zone will be enforced twenty four hours a day throughout the exercise dates. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule has been found to be so minimal that a full regulatory evaluation is unnecessary. This regulation is temporary in nature and will not impede the flow of normal commercial traffic that is currently allowed to transit Thimble Shoal Channel. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

This regulation contains no information collection or record keeping requirements.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary 165.T540 is added, to read as follows:

§ 165.T540 Safety Zone: Chesapeake Bay, Norfolk Harbor Reach, Port of Hampton Roads, Virginia.

(a) *Location.* The following area is a safety zone: The waters of Norfolk Harbor Reach within 500 yards of vessels anchored in positions 36–56'55"N/76–03'16"W, 36–56'14"N/76–03'08"W, 36–56'44"N/76–02'31"W, and 36–56'37"N/76–01'50"W, and around the floating pier, and elevated causeway extending from the beach into Anchorage A.

(b) *Effective date.* This regulation is effective from 12:01 a.m., on September 4, 1991. It terminates at 11:59 p.m. on October 8, 1991, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia or his designated representative. The general requirements of § 165.23 also apply to this regulation.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or his designated representative. The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have been designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, the Coast Guard Patrol Commander, and the Duty Officer at the Marine Safety Office, Norfolk, VA. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16. The Captain of the Port, Hampton Roads, and the Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at telephone number (804) 441–3307.

(3) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

Dated: July 29, 1991.

G.J.E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 91–18848 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 91–118]

Safety Zone Regulations; Raritan Bay, Sandy Hook, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Raritan Bay, New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an Army training exercise involving numerous parachutists entering a drop zone in this area. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 6:00 a.m., 25 August 1991. It terminates at 12:00 p.m., 25 August 1991.

FOR FURTHER INFORMATION CONTACT: QMC Honke of Group Sandy Hook Operations at (201) 872–0300.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. JENNINGS, project officer, Captain of the Port New York, and LT JOHN B. GATELY, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with an Army Training Exercise. This regulation is effective from 11 a.m., 25 August 1991 to 2 p.m., 25 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 1225 and 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new temporary 165.0118 is added to read as follows:

§ 165.0118 Safety Zone: Raritan Bay, New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters of Raritan Bay within a 1000 yard radius of a point located at 40°28'30" North and 074°06'00" West.

(b) *Effective date.* This regulation becomes effective at 6:00 a.m., 25 August 1991. It terminates at 12:00 p.m., 25 August 1991.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 22, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–18847 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[GEN Docket No. 88–96; FCC 91–194]

Allocation of the 849–851/894–896 MHz Bands for Air-Ground Radiotelephone Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This action grants in part petitions for reconsideration filed by McCaw Cellular Communications, Inc. (McCaw) and GTE Airfone Incorporated (GTE) of the Report and Order in GEN Docket No. 88–96, 55 FR 25840 (June 25, 1990). The objective of this action is to ensure greater opportunity for competition in the 800 MHz air-ground radiotelephone market.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Carl Huie, (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order adopted June 25, 1991, and released July 11, 1991. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Public Reference Room (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Summary of Memorandum Opinion and Order

1. On April 12, 1990, the Commission adopted a Report and Order, GEN Docket No. 88–96, 55 FR 25840 (June 25, 1990), establishing an air-ground (AG) radiotelephone service to operate on the 849–851/894–896 MHz frequency bands. Petitions for reconsideration were timely filed by McCaw and GTE addressing among other things: (1) Whether GTE's airline contracts that were entered into prior to release of the Report and Order should be invalidated; (2) whether resale of GTE's AG service should be mandated on an interim basis; (3) whether federal preemption of state regulation of AG communications should be expanded; (4) whether the transition period for GTE to change its system from experimental to regular service should be extended; (5) whether the technical rules should be amended to reduce potential interference; and, (6) whether the Commission should establish an AG advisory committee to recommend technical improvements and to assist in resolving disputes among licensees.

2. With respect to GTE's contracts with airlines entered into prior to the establishment of AG service, the Commission determined that to allow competition to develop fully in the AG market, airlines need to be able to terminate, at their option and without penalty, contracts entered into with GTE prior to December 24, 1990, for equipment installed prior to July 11, 1991. Therefore, the Commission decided to impose restrictions on the AG license that will be granted GTE that require GTE to refrain from enforcing any restrictive provisions in the contracts that obligate the airlines to operate their AG services exclusively with GTE. GTE will be required to notify all affected parties within 30 days that the relevant contractual provisions will not be enforced.

3. With respect to resale, the Commission determined that GTE's head start and competitive advantage is such that it is necessary to require the resale of GTE's AG service to facilitate the entry of other AG providers. Accordingly, the Commission is requiring GTE to make its service available to the other AG licensees for resale at non-discriminatory rates based upon current resale policies.

4. The Commission declined GTE's request to extend federal preemption of AG communications to all aircraft that fly interstate routes, noting that the states have shown no interest in regulating AG communications. The Commission stated that it will not act with regard to additional preemption unless and until a specific situation arises that requires its attention.

5. The Commission agreed with GTE that the 12 months granted for its transition period is unrealistically short for redesigning, procuring, testing, and retrofitting all of its ground stations and aircraft with new equipment. Concerned that if GTE is required to cease operation because the transition period is too short, which would result in lost service to the public, the Commission provided GTE 22 months to modify its current equipment for narrow control channel operation (3.2 kHz bandwidth) in the lower portion of each channel block and a total of 60 months to bring its AG service into full compliance with the rules. The Commission also provided GTE six months to bring its cordless telephones used in AG service into compliance with part 15 standards.

6. Additionally, the Commission amended its technical rules to reduce the potential for interference while providing AG licensees flexibility in their system designs. The major technical issues involved the channel plan, control channel bandwidth, coordination of available channels, communication with aircraft on the ground, and equipment specifications and design requirements. The Commission also corrected the list of ground station locations set forth in its rules.

7. With respect to the channel plan, the Commission increased the center frequencies by 1.5 kHz in order to be consistent with GTE's experimental system and facilitate the transition.

8. To enable the new licensees to initiate AG service without waiting for GTE to narrow its control channels, the Commission reassigned communications channels C–28 through C–31 and moved the control channels from the lower end to the upper end of each channel block. Removing channels C–28 through C–31

also will permit two more control channels that can accommodate two additional licensees. The channel numbers were renumbered accordingly. GTE will have 22 months to narrow its wideband control channels and vacate new communications channel C–1 and C–3, and an additional 38 months to replace its experimental control channel at C–2 with its regular control channel at the upper end of each channel block.

9. The Commission decided not to increase the control channel bandwidth to 6 kHz to accommodate future signaling needs, stating that some of the signal messages and information might be sent on the communications channels and expressed concern that expanding the bandwidth to 6 kHz would mean the loss of 3 communications channels.

10. The Commission also decided not to require that all AG licensees establish land-links among the ground stations in each location to coordinate available channel information, stating that radio frequency signal monitoring as required in the rules is a reliable method for determining channel availability and that requiring land-link monitoring would be excessively burdensome and expensive for all of the licensees.

11. With respect to deleting rules concerning reuse of the allotted channel blocks for communication with aircraft on the ground, the Commission expressed its belief that it is important to allow AG licensees to provide service to aircraft on the ground, but did agree to revise the antenna radiation pattern requirements in § 22.1109(a) by replacing the radiation pattern with a requirement that ground stations providing service to aircraft on the ground be located at least 300 miles from other ground stations using the same channel blocks to communicate with airborne mobile stations. Also, the Commission reduced the transmitter output power to 1 watt ERP for ground stations operating under this section.

12. With respect to equipment specifications and design requirements, the Commission amended its rules to add an adjacent channel interference standard based on maximum power limits, but retained a modified emission mask for transmitter tests and certification. The Commission denied other proposals to amend the technical rules, but encouraged licensees to employ techniques they view necessary for the efficent operation of AG radiotelephone service.

13. The Commission decided that establishing an advisory committee for the AG service would be unnecessary, stating that the rules provide adequate government policy direction to foster the growth and development of AG service. The Commission did encourage licensees to form their own association.

14. Accordingly, *it is ordered* That the petitions for reconsideration filed by McCaw Cellular Communications, Inc. and GTE Airfone Incorporated *are granted* to the extent indicated herein. *It is further ordered* That under the authority contained in 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r), part 22 of the Commission's Rules *are amended* as specified below, effective 30 days after publication in the Federal Register.

List of Subjects in 47 CFR Part 22

Communications common carriers, radio

Rule Changes

Part 22 of chapter I of title 47 of the Code of Federal Regulations, is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation in part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. Section 22.1107 is amended by revising the section heading, paragraphs (a)(1), (a)(2) introductory text, (a)(2)(ii), and (b), and by removing paragraph (a)(iii), to read as follows:

§ 22.1107 Channel plan.

* * * * *

(a) * * *

(1) Each channel block is subdivided into 6 control channels labeled P–1 through P–6, and 29 communications channels labeled C–1 through C–29.

(2) The authorized channel bandwidths are as follows:

* * * * *

(II) Each communications channel has a bandwidth of 6 kHz.

* * * * *

(b) The center frequencies of the communications and control channels are listed in the following table. Guardbands are labeled "GB".

GROUND TO AIR CHANNELS

[Center frequency in MHz]

Channel No.	Channel Block				
	10	9	8	7	6
C–1	849.0055	849.2055	849.4055	849.6055	849.8055
C–2	849.0115	849.2115	849.4115	849.6115	849.8115
C–3	849.0175	849.2175	849.4175	849.6175	849.8175
C–4	849.0235	849.2235	849.4235	849.6235	849.8235
C–5	849.0295	849.2295	849.4295	849.6295	849.8295
C–6	849.0355	849.2355	849.4355	849.6355	849.8355
C–7	849.0415	849.2415	849.4415	849.6415	849.8415
C–8	849.0475	849.2475	849.4475	849.6475	849.8475
C–9	849.0535	849.2535	849.4535	849.6535	849.8535
C–10	849.0595	849.2595	849.4595	849.6595	849.8595
C–11	849.0655	849.2655	849.4655	849.6655	849.8655
C–12	849.0715	849.2715	849.4715	849.6715	849.8715
C–13	849.0775	849.2775	849.4775	849.6775	849.8775
C–14	849.0835	849.2835	849.4835	849.6835	849.8835
C–15	849.0895	849.2895	849.4895	849.6895	849.8895
C–16	849.0955	849.2955	849.4955	849.6955	849.8955
C–17	849.1015	849.3015	849.5015	849.7015	849.9015
C–18	849.1075	849.3075	849.5075	849.7075	849.9075
C–19	849.1135	849.3135	849.5135	849.7135	849.9135
C–20	849.1195	849.3195	849.5195	849.7195	849.9195
C–21	849.1255	849.3255	849.5255	849.7255	849.9255
C–22	849.1315	849.3315	849.5315	849.7315	849.9315
C–23	849.1375	849.3375	849.5375	849.7375	849.9375
C–24	849.1435	849.3435	849.5435	849.7435	849.9435

GROUND TO AIR CHANNELS—Continued

[Center frequency in MHz]

Channel No.	Channel Block				
	10	9	8	7	6
C-25	849.1495	849.3495	849.5495	849.7495	849.9495
C-26	849.1555	849.3555	849.5555	849.7555	849.9555
C-27	849.1615	849.3615	849.5615	849.7615	849.9615
C-28	849.1675	849.3675	849.5675	849.7675	849.9675
C-29	849.1735	849.3735	849.5735	849.7735	849.9735
GB	849.1765–849.1797	849.3765–849.3797	849.5765–849.5797	849.7765–849.7797	849.9765–849.9797
P-6	849.1813	849.3813	849.5813	849.7813	849.9813
P-5	849.1845	849.3845	849.5845	849.7845	849.9845
P-4	849.1877	849.3877	849.5877	849.7877	849.9877
P-3	849.1909	849.3909	849.5909	849.7909	849.9909
P-2	849.1941	849.3941	849.5941	849.7941	849.9941
P-1	849.1973	849.3973	849.5973	849.7973	849.9973

Channel No.	5	4	3	2	1
C-1	850.0055	850.2055	850.4055	850.6055	850.8055
C-2	850.0115	850.2115	850.4115	850.6115	850.8115
C-3	850.0175	850.2175	850.4175	850.6175	850.8175
C-4	850.0235	850.2235	850.4235	850.6235	850.8235
C-5	850.0295	850.2295	850.4295	850.6295	850.8295
C-6	850.0355	850.2355	850.4355	850.6355	850.8355
C-7	850.0415	850.2415	850.4415	850.6415	850.8415
C-8	850.0475	850.2475	850.4475	850.6475	850.8475
C-9	850.0535	850.2535	850.4535	850.6535	850.8535
C-10	850.0595	850.2595	850.4595	850.6595	850.8595
C-11	850.0655	850.2655	850.4655	850.6655	850.8655
C-12	850.0715	850.2715	850.4715	850.6715	850.8715
C-13	850.0775	850.2775	850.4775	850.6775	850.8775
C-14	850.0835	850.2835	850.4835	850.6835	850.8835
C-15	850.0895	850.2895	850.4895	850.6895	850.8895
C-16	850.0955	850.2955	850.4955	850.6955	850.8955
C-17	850.1015	850.3015	850.5015	850.7015	850.9015
C-18	850.1075	850.3075	850.5075	850.7075	850.9075
C-19	850.1135	850.3135	850.5135	850.7135	850.9135
C-20	850.1195	850.3195	850.5195	850.7195	850.9195
C-21	850.1255	850.3255	850.5255	850.7255	850.9255
C-22	850.1315	850.3315	850.5315	850.7315	850.9315
C-23	850.1375	850.3375	850.5375	850.7375	850.9375
C-24	850.1435	850.3435	850.5435	850.7435	850.9435
C-25	850.1495	850.3495	850.5495	850.7495	850.9495
C-26	850.1555	850.3555	850.5555	850.7555	850.9555
C-27	850.1615	850.3615	850.5615	850.7615	850.9615
C-28	850.1675	850.3675	850.5675	850.7675	850.9675
C-29	850.1735	850.3735	850.5735	850.7735	850.9735
GB	850.1765–850.1797	850.3765–850.3797	850.5765–850.5797	850.7765–850.7797	850.9765–850.9797
P-6	850.1813	850.3813	850.5813	850.7813	850.9813
P-5	850.1845	850.3845	850.5845	850.7845	850.9845
P-4	850.1877	850.3877	850.5877	850.7877	850.9877
P-3	850.1909	850.3909	850.5909	850.7909	850.9909
P-2	850.1941	850.3941	850.5941	850.7941	850.9941
P-1	850.1973	850.3973	850.5973	850.7973	850.9973

AIR TO GROUND CHANNELS

[Center frequency in MHz]

Channel No.	Channel block				
	10	9	8	7	6
C-1	894.0055	894.2055	894.4055	894.6055	894.8055
C-2	894.0115	894.2115	894.4115	894.6115	894.8115
C-3	894.0175	894.2175	894.4175	894.6175	894.8175
C-4	894.0235	894.2235	894.4235	894.6235	894.8235
C-5	894.0295	894.2295	894.4295	894.6295	894.8295
C-6	894.0355	894.2355	894.4355	894.6355	894.8355
C-7	894.0415	894.2415	894.4415	894.6415	894.8415
C-8	894.0475	894.2475	894.4475	894.6475	894.8475
C-9	894.0535	894.2535	894.4535	894.6535	894.8535
C-10	894.0595	894.2595	894.4595	894.6595	894.8595
C-11	894.0655	894.2655	894.4655	894.6655	894 8655
C-12	894.0715	894.2715	894.4715	894.6715	894.8715
C-13	894.0775	894.2775	894.4775	894.6775	894.8775

AIR TO GROUND CHANNELS—Continued

[Center frequency in MHz]

Channel No.	Channel block				
	10	9	8	7	6
C-14	894.0835	894.2835	894.4835	894.6835	894.8835
C-15	894.0895	894.2895	894.4895	894.6895	894.8895
C-16	894.0955	894.2955	894.4955	894.6955	894.8955
C-17	894.1015	894.3015	894.5015	894.7015	894.9015
C-18	894.1075	894.3075	894.5075	894.7075	894.9075
C-19	894.1135	894.3135	894.5135	894.7135	894.9135
C-20	894.1195	894.3195	894.5195	894.7195	894.9195
C-21	894.1255	894.3255	894.5255	894.7255	894.9255
C-22	894.1315	894.3315	894.5315	894.7315	894.9315
C-23	894.1375	894.3375	894.5375	894.7375	894.9375
C-24	894.1435	894.3435	894.5435	894.7435	894.9435
C-25	894.1495	894.3495	894.5495	894.7495	894.9495
C-26	894.1555	894.3555	894.5555	894.7555	894.9555
C-27	894.1615	894.3615	894.5615	894.7615	894.9615
C-28	894.1675	894.3675	894.5675	894.7675	894.9675
C-29	894.1735	894.3735	894.5735	894.7735	894.9735
GB	894.1765–894.1795	894.3765–894.3795	894.5765–894.7595	894.7765–894.7795	894.9765–894.9795
P-6	894.1813	894.3813	894.5813	894.7813	894.9813
P-5	894.1845	894.3845	894.5845	894.7845	894.9845
P-4	894.1877	894.3877	894.5877	894.7877	894.9877
P-3	894.1909	894.3909	894.5909	894.7909	894.9909
P-2	894.1941	894.3941	894.5941	894.7941	894.9941
P-1	894.1973	894.3873	894.5973	894.7973	894.9973

Channel No.	5	4	3	2	1
C-1	895.0055	895.2055	895.4055	895.6055	895.8055
C-2	895.0115	895.2115	895.4115	895.6115	895.8115
C-3	895.0175	895.2175	895.4175	895.6175	895.8175
C-4	895.0235	895.2235	895.4235	895.6235	895.8235
C-5	895.0295	895.2295	895.4295	895.6295	895.8295
C-6	895.0355	895.2355	895.4355	895.6355	895.8355
C-7	895.0415	895.2415	895.4415	895.6415	895.8415
C-8	895.0475	895.2475	895.4475	895.6475	895.8475
C-9	895.0535	895.2535	895.4353	895.6535	895.8535
C-10	895.0595	895.2595	895.4595	895.6595	895.8595
C-11	895.0655	895.2655	895.4655	895.6655	895.8655
C-12	895.0715	895.2715	895.4715	895.6715	895.8715
C-13	895.0775	895.2775	895.4775	895.6775	895.8775
C-14	895.0835	895.2835	895.4835	895.6835	895.8835
C-15	895.0895	895.2895	895.4895	895.6895	895.8895
C-16	895.0955	895.2955	895.4955	895.6955	895.8955
C-17	895.1015	895.3015	895.5015	895.7015	895.9015
C-18	895.1075	895.3075	895.5075	895.7075	895.9075
C-19	895.1135	895.3135	895.5135	895.7135	895.9135
C-20	895.1195	895.3195	895.5195	895.7195	895.9195
C-21	895.1255	895.3255	895.5255	895.7255	895.9255
C-22	895.1315	895.3315	895.5315	895.7315	895.9315
C-23	895.1375	895.3375	895.5375	895.7375	895.9375
C-24	895.1435	895.3435	895.5435	895.7435	895.9435
C-25	895.1495	895.3495	895.5495	895.7495	895.9495
C-26	895.1555	895.3555	895.5555	895.7555	895.9555
C-27	895.1615	895.3615	895.5615	895.7615	895.9615
C-28	895.1675	895.3675	895.5675	895.7675	895.9675
C-29	895.1735	895.3735	895.5735	895.7735	895.9735
GB	895.1765–895.1797	895.3765–895.3797	895.5765–895.5797	895.7765–895.7797	895.9765–895.9797
P-6	895.1813	895.3813	895.5813	895.7813	895.9813
P-5	895.1845	895.3845	895.5845	895.7845	895.9845
P-4	895.1877	895.3877	895.5877	895.7877	895.9877
P-3	895.1909	895.3909	895.5909	895.7909	895.9909
P-2	895.1941	895.3941	895.5941	895.7941	895.9941
P-1	895.1973	895.3973	895.5973	895.7973	895.9973

3. Section 22.1109 is amended by revising the section heading, the introductory text and table and paragraph (a) to read as follows:

§ 22.1109 Geographical channel block layout.

Except as provided in paragraphs (a) and (b) of this section, ground station locations must be within one mile of the locations listed in this paragraph. The channel block allotted for each location must be used to provide service to airborne mobile stations in flight and may be used to provide service to airborne mobile stations on ground.

Location	N. Latitude	W. Longitude	Channel Block
Alaska:			
Anchorage	61°11'06"	149°54'42"	8
Cordova	60°33'00"	145°43'00"	5
Ketchikan	55°21'20"	131°42'33"	5
Juneau	58°21'18"	134°34'30"	4
Sitka	57°03'30"	135°22'01"	7
Yakutat	59°30'30"	142°30'00"	8
Alabama:			
Birmingham	33°23'24"	086°39'59"	2
Arizona:			
Phoenix	33°35'39"	112°05'12"	4
Winslow	35°01'17"	110°43'02"	6
Arkansas:			
Pine Bluff	34°10'56"	091°56'18"	8
California:			
Blythe	33°36'39"	114°42'24"	10
Eureka	40°42'59"	124°12'09"	8
Los Angeles	33°56'45"	118°23'03"	4
Oakland	37°51'12"	122°12'30"	1
S. San Francisco	37°41'15"	122°26'01"	6
Visalia	36°19'36"	119°23'22"	7
Colorado:			
Colorado Springs	38°44'39"	104°51'46"	8
Denver	39°46'45"	104°50'49"	1
Hayden	40°29'04"	107°13'08"	6
Florida:			
Miami	25°48'27"	80°16'30"	4
Orlando	28°26'53"	81°22'00"	2
Tallahassee	30°24'02"	84°21'18"	7
Georgia:			
Atlanta	33°39'05"	84°25'54"	5
St. Simons Island	31°09'22"	81°23'14"	6
Hawaii:			
Mauna Kapu	21°24'24"	158°06'02"	5
Idaho:			
Blackfoot	43°11'34"	112°20'57"	8
Caldwell	43°38'45"	116°38'44"	10
Illinois:			
Chicago	41°46'49"	87°45'20"	3
Kewanee	41°12'05"	89°57'33"	5
Schiller Park	41°57'18"	87°52'57"	2
Indiana:			
Fort Wayne	40°59'16"	85°11'31"	7
Iowa:			
Des Moines	41°31'58"	93°38'54"	1
Kansas:			
Garden City	37°59'35"	100°54'04"	3
Wichita	37°37'24"	97°27'15"	7
Kentucky:			
Fairdale	38°04'48"	85°47'33"	6
Louisiana:			
Kenner	30°00'44"	90°13'30"	3
Shreveport	32°27'09"	93°49'38"	5
Massachusetts:			
Boston	42°23'15"	71°01'03"	7
Michigan:			
Bellville	42°12'17"	83°29'09"	8
Flint	42°58'21"	83°44'22"	9
Sault Ste. Marie	46°28'45"	84°21'31"	6
Minnesota:			
Bloomington	44°51'30"	93°13'19"	9
Mississippi:			
Meridian	32°19'10"	88°41'33"	9
Missouri:			
Kansas City	39°18'37"	94°41'07"	6
St. Louis	38°42'45"	90°19'19"	4
Springfield	37°14'28"	93°22'54"	9
Montana:			
Lewistown	47°02'56"	109°27'27"	5
Miles City	46°25'30"	105°52'30"	8
Missoula	47°01'05"	114°00'41"	3
Nebraska:			
Grand Island	40°58'00"	98°19'11"	2
Ogallala	41°07'11"	101°45'37"	4
Nevada:			
Las Vegas	36°05'35"	115°10'25"	1
Reno	39°35'13"	119°55'52"	3
Tonopah	38°03'43"	117°13'24"	9
Winnemucca	41°00'39"	117°45'58"	4
New Mexico:			
Alamogordo	32°54'46"	105°56'41"	8

Location	N. Latitude	W. Longitude	Channel Block
Albuquerque	35°03'05"	106°37'13"	10
Aztec	36°48'42"	107°53'48"	9
Clayton	36°27'29"	103°11'16"	5
New Jersey:			
Woodbury	39°50'01"	75°09'21"	3
New York:			
E. Elmhurst	40°46'21"	73°52'42"	1
Schuyler	43°09'09"	75°07'50"	2
Staten Island	40°36'05"	74°06'35"	9
North Carolina:			
Greensboro	36°05'54"	79°56'42"	9
Wilmington	34°16'10"	77°54'24"	3
North Dakota:			
Dickinson	46°51'05"	102°47'35"	7
Ohio:			
Pataskala	40°04'38"	82°41'57"	1
Oklahoma:			
Warner	35°29'31"	95°18'25"	4
Woodward	36°24'42"	99°28'50"	9
Oregon:			
Alabany	44°38'24"	123°03'36"	5
Klamath Falls	42°06'30"	121°38'00"	2
Pendleton	45°35'45"	118°31'02"	7
Pennsylvania:			
Coraopolis	40°30'33"	80°13'27"	4
New Cumberland	40°11'30"	76°52'02"	8
South Carolina:			
Charleston	32°54'10"	80°01'20"	4
South Dakota:			
Aberdeen	45°27'21"	98°25'26"	6
Rapid City	44°02'36"	103°03'36"	5
Tennessee:			
Elizabethton	36°26'04"	82°08'06"	7
Memphis	35°01'44"	89°56'15"	10
Nashville	36°08'44"	86°41'31"	3
Texas:			
Austin	30°16'37"	97°49'34"	2
Bedford	32°50'19"	97°08'03"	1
Houston	29°54'37"	95°24'39"	9
Lubbock	33°37'06"	101°52'14"	7
Monahans	31°34'58"	102°54'18"	6
Utah:			
Abajo Peak	37°50'21"	109°27'42"	7
Delta	39°23'15"	112°30'44"	2
Escalante	37°45'19"	111°52'27"	5
Green River	38°57'54"	110°13'40"	3
Salt Lake City	40°39'11"	112°12'06"	1
Virginia:			
Arlington	38°52'55"	77°06'18"	6
Washington:			
Seattle	47°26'08"	122°17'35"	4
Cheney	47°33'14"	117°43'35"	1
West Virginia:			
Charleston	38°19'47"	81°39'36"	2
Wisconsin:			
Stevens Point	44°33'06"	89°25'27"	8
Wyoming:			
Riverton	43°03'37"	108°27'23"	9

(a) Air-ground licensees may use any of the channels to provide service from any location to airborne mobile stations on the ground, provided that no interference is caused to service provided by ground stations operating in accordance with the geographical channel block layout or with paragraph (b) of this section, and provided that the locations of ground stations providing such service are at least 300 miles from all locations using the channel block(s) for communication with 800 MHz airborne mobile stations in flight.

* * * * *

4. Section 22.1111 is amended by removing and reserving paragraph (b) and by revising paragraphs (a), (c), and (d) to read as follows:

§ 22.1111 Emission limitations.

* * * * *

(a) *All transmitters.* The power of any emission in each of the adjacent channels must be at least 30 decibels below the peak envelope power of the main emission and the power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 decibels below the peak envelope power of the main emission. Additionally, for:

(1) *Airborne mobile stations.* The power of any emission in each of the adjacent channels must not exceed −30 dBm at any ground station receiver, assuming a 0 dBi receive antenna. The power of any emission in any of the channels other than the one being used and the adjacent channels must not exceed −148 dBm at any ground station receiver, assuming a 0 dBi receive antenna.

(2) *Ground stations.* The effective radiated power (ERP) of any emission outside of the frequency range allocated

to this service (see § 22.1105) must not exceed −10 dBm. The ERP of any emission in each of the adjacent channels must not exceed +10 dBm. The ERP of any emission in any of the channels other than the one being used and the adjacent channels must not exceed −5 dBm.

(b) (reserved)

(c) If an emission on any frequency outside of the authorized bandwidth causes harmful interference, the Commission may require greater attenuation of that emission than required in paragraph (a) of this section.

(d) The provisions of § 22.106 of this part do not apply to 800 MHz air-ground systems. Instead, the provisions of paragraphs (a) and (c) of this section apply to systems of the 800 MHz Air-Ground Radiotelephone Service.

5. Section 22.1115 is amended by revising the section heading and paragraphs (a) and (d), and by adding new paragraph (e) to read as follows:

§ 22.1115 Automatic channel selection procedures.

* * * * *

(a) A communications channel is not available for use by a ground station if it is already in use by another ground station at the same location. Ground station equipment must automatically determine whether channels are in use by other ground stations at the same location, and may employ radio frequency signal monitoring to do so. For example, a communications channel may be determined to be in use if the received signal power on that channel at the ground station exceeds −115 dBm, assuming a 0 dB gain 895 MHz receive antenna, which corresponds to a field strength of approximately 19 dBu V/m. Ground stations may employ an alternative method of determining whether a communications channel is in use provided that such procedure is at least as reliable as radio frequency signal monitoring.

* * * * *

(d) A ground station may not transmit on a communications channel unless it has received the proper identification code. After a ground station has begun to transmit on a communications channel, that channel is not available to ground stations other than the one from which service has been requested until the call is terminated.

(e) A call is terminated by the ground station when either a hang-up signal is transmitted by the airborne mobile station, or the signal from the airborne mobile station on the communications channel is lost for a period of 15 continuous seconds. The hang-up signal is the on-off keying (50% duty cycle) of an unmodulated carrier over a period of one second with pulse duration of 5 milliseconds. However, if all 800 MHz air-ground licensees agree that an alternative hang-up signal and/or procedure would be more efficient or beneficial, such alternative hang-up signal and/or procedure may be used. The licensees must jointly give prior notification to the Commission if an alternative hang-up signal and/or procedure is used.

(6) Section 22.1117 is revised to read as follows:

§ 22.1117 Limitations on effective radiated power.

The effective radiated power (ERP) of airborne mobile station transmitters shall not exceed 30 watts. The ERP of ground station transmitters using the allotted channel blocks in § 22.1109 must not exceed 100 watts. The ERP of ground station transmitters operating pursuant to § 22.1109(a) must not exceed 1 watt.

(7) Section 22.1119 is revised to read as follows:

§ 22.1119 Assignment of control channels.

The Commission will select and assign exclusively one control channel to each air-ground licensee after receiving written notification that the licensee's system will begin providing service within one month.

(8) Section 22.1121 is added to read as follows:

§ 22.1121 Control channel transition period.

In converting its experimental air-ground system to one that conforms to the other rules of this section, the experimental licensee is authorized to use the lower 20 kHz of each channel block, which includes communications channels C–1, C–2, and C–3, for control channels until July 9, 1993. After that date communications channels C–1 and C–3 will be available to all air-ground licensees as communications channels and the experimental licensee is authorized to use a 3.2 kHz control channel located in communications channel C–2 of each channel block until September 9, 1996. After that date communications channel C–2 will be available to all air-ground licensees as a communications channel.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18914 Filed 8–8–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF JUSTICE

48 CFR Part 2801

[Justice Acquisition Circular 91–2]

Amendment to the Justice Acquisition Regulations (JAR) Regarding Contracting Officers Technical Representatives

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: Justice Acquisition Circular (JAC) 91–2 amends the JAR, 48 CFR Chapter 28, by revising subpart 2801.70 to add eligibility standards for individuals who will be designated as Contracting Officers Technical Representatives (COTRs) for departmental contracts.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division (202) 514–6868.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 48 CFR Part 2801

Government procurement.

Harry H. Flickinger,

Assistant Attorney General for Administration.

For the reasons set out in the preamble, title 48, chapter 28 of the Code of Federal Regulations is amended as follows:

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 2801 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

2. Part 2801 is amended by revising subpart 2801.70 to read as follows:

Subpart 2801.70—Contracting Officer's Technical Representative (COTR's)

Sec.
2801.7001–701 General.
2801.7001–702 Selection, Appointment, Limitation of Authority.
2801.7001–703 Performance Standards.

Subpart 2801.70—Contracting Officer's Technical Representative

2801.7001–701 General.

Contracting officers may appoint individuals selected by program offices to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as Contracting Officers' Technical Representatives (COTR's).

2801.7001–702 Selection, appointment, limitation of authority.

(a) *COTR Standards Program.* This subpart sets forth policies and procedures for establishing standards for COTR's in DOJ. The program sets forth minimum standards for individuals to be eligible for an appointment as a COTR.

(b) *Applicability.* The eligibility requirements of this subpart apply to all individuals who are designated by the contracting officer as COTR's.

(c) *Eligibility standards.* To be determined eligible for an appointment as a DOJ COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course;

(2) The candidate must attend a minimum of 3 hours training specifically in procurement ethics, either through courses offered periodically by the Department, the bureaus, or a commercial vendor; and

(3) The candidate must sign the certification for procurement officials required by the recent Procurement Integrity Act.

(d) *Certification and appointment.* (1) In accordance with bureau procedures, the individual must provide the contracting activity with evidence of completion of the COTR course, procurement ethics training, and with the certification required by the Procurement Integrity Act. Upon determination that the required standards have been met, the Bureau Procurement Chief will issue a one-time Certificate of COTR Appointment, Form DOJ–539, to the individual. All contracting activities shall develop and maintain a listing of individuals who have met the Program standards and have been issued a Certificate of COTR Appointment.

(2) Once the COTR standards have been met and a Certificate of Appointment has been issued, an individual may be designated and appointed by a contracting officer to serve as a COTR for a particular contract. The individual shall be designated in the contract schedule as the COTR and shall be notified in writing by the contracting officer of the scope and limitations of the COTR's authority as it pertains to the particular contract the individual will administer.

(e) *Limitations.* Each appointment of a COTR made by the contracting officer shall clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233–1, Disputes; or,

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(f) *Termination.* Termination of the COTR's appointment shall be made in writing by the contracting officer and shall give the effective date of the termination. The contracting officer shall promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

(g) *Implementation schedule and waivers.* Effective one year from the incorporation of this Standards Program into the JAR, no individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the Procurement Executive may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver may be granted in accordance with the following procedures:

(1) The request for a waiver must be submitted in writing by the Bureau Procurement Chief and contain a full description of the circumstances and rationale for the request;

(2) The individual must review and discuss with the cognizant contracting officer the OPE published "Procurement Information Guide for Contracting Officers' Technical Representatives (COTR)." When practicable, these discussions should be held face-to-face; and

(3) The individual agrees to attend the next scheduled COTR training course.

2801.7001–703 Performance standards.

Supervisors of COTR's are encouraged to include successful contract administration in performance standards for individuals with contract administration responsibility.

[FR Doc. 91–18841 Filed 8–8–91; 8:45 am]
BILLING CODE 4410–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1151

[Ex Parte No. 395 (Sub-No. 2)]

RIN 3120–AB66

Revision of Feeder Railroad Development Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission amends 49 CFR part 1151 to facilitate public participation in feeder railroad application proceedings under 49 U.S.C 10910. A Notice of Proposed Rulemaking was published on January 11, 1990 at 55 FR 1067. The feeder railroad procedures are modified to provide for **Federal Register** notice accepting an application as complete. Waiver procedures are added. Discovery procedures are clarified. The 140-day deadline for issuing a decision and obsolete provisions are removed. Also, the Commission will discontinue its policy of automatically rejecting feeder line applications when an abandonment proceeding involving the same track is pending, and instead, will decide whether to accept them on a case-by-case basis. To effect the modifications, appropriate delegations of authority to the Director of the Office of Proceedings to accept or reject applications and to grant waivers are adopted.

EFFECTIVE DATE: The amendments are effective on September 8, 1991.

FOR ADDITIONAL INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 275–4357. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will not have a significant effect on a substantial number of small entities.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations, Organizations and functions.

49 CFR Part 1151

Administrative practice and procedure, Railroads.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10301, 10305, 10321 and 10910.

Decided: July 24, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Chairman Philbin concurred in part and dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011 and 1151 of the Code of Federal Regulations are amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2 is amended by removing the word "and" at the end of paragraph (a)(8)(iv); changing the period at the end of paragraph (a)(8)(v) to a semicolon and adding the word "and"; and adding a new paragraph (a)(8)(vi) to read as follows:

§ 1011.2 The Commission.

(a) * * *

(8) * * *

(vi) In proceedings under the Feeder Railroad Development Program under 49 CFR part 1151:

(A) Whether to accept or reject initial applications under § 1151.2(b); competing applications under § 1151.2(c); and incomplete initial or competing applications under § 1151.2(d).

(B) Whether to grant waivers from specific provisions of 49 CFR part 1151.

* * * * *

3. Section 1011.8 is amended by adding a new paragraph (c)(9) to read as follows:

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

* * * * *

(c) * * *

(9) In proceedings under the Feeder Railroad Development Program under 49 CFR part 1151:

(i) Whether to accept or reject primary applications under § 1151.2(b); competing applications under § 1151.2(c); and incomplete applications under § 1151.2(d).

(ii) Whether to grant waivers from specific provisions of 49 CFR part 1151.

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

4. The authority citation for part 1151 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10910.

§ 1151.1 [Amended]

5. The last sentence in § 1151.1 is removed.

6. Section 1151.2 is revised to read as follows:

§ 1151.2 Procedures.

(a) Service. When an application is filed, applicant must concurrently serve a copy of the application by first class mail on:

(1) The owning railroad;

(2) All rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed;

(3) The designated State agency in the State(s) where the property is located;

(4) County governments where the line is located;

(5) The National Railroad Passenger Corporation (Amtrak) (if Amtrak operates on the line);

(6) And the national offices of rail unions with employees on the line.

(b) Acceptance or rejection of an application.

(1) The Commission, through the Director of the Office of Proceedings, will accept a complete application no later than 30 days after the application is filed by publishing a notice in the **Federal Register**. An application is complete if it has been properly served and contains substantially all information required by § 1151.3, except as modified by advance waiver. The notice will also announce the schedule for filing of competing applications and responses.

(2) The Commission, through the Director of the Office of Proceedings, will reject an incomplete application by serving a decision no later than 30 days after the application is filed. The decision will explain specifically why the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference.

(c) Competing applications.

(1) Unless otherwise scheduled in the notice, competing applications by other parties seeking to acquire all or any portion of the line sought in the initial application are due within 30 days after the initial application is accepted.

(2) The Commission, through the Director of the Office of Proceedings, will issue a decision accepting or rejecting a competing application no later than 15 days after it is filed. A competing application will be rejected if it does not substantially contain the information required by § 1151.3, except as modified by advance waiver.

(d) Incomplete applications.

(1) If an applicant seeking to file an initial or competing application is unable to obtain required information that is primarily or exclusively within the personal knowledge of the owning carrier, the applicant may file an incomplete application if it files at the same time a request for discovery under 49 CFR part 1114 to obtain the needed information from the owning carrier.

(2) The Commission, through the Director of the Office of Proceedings, will by decision conditionally accept incomplete initial or competing applications, if the Director determines that the discovery sought is necessary for the application and primarily or exclusively within the knowledge of the owning carrier.

(3) When the information sought through discovery has been filed for an initial application, **Federal Register** notice under paragraph (b) of this section will be published.

(4) When the information sought through discovery has been filed for a competing application, a decision will be issued under paragraph (c) of this section.

(e) Comments. Unless otherwise scheduled in the notice, verified statements and comments addressing both the initial and competing applications must be filed within 60 days after the initial application is accepted.

(f) Replies. Unless otherwise scheduled in the notice, verified replies by applicants and other interested parties must be filed within 80 days after the initial application is accepted.

(g) Publication. If the Commission finds that the public convenience and necessity require or permit sale of the line, the Commission shall concurrently publish this finding in the **Federal Register.**

(h) Acceptance or rejection. If the Commission concludes that sale of the line should be required, the applicant(s) must file a notice with the Commission and the owning railroad accepting or rejecting the Commission's determination. The notice must be filed within 10 days of the service date of the decision.

(i) Selection. If two or more applicants timely file notices accepting the Commission's determination, the owning railroad must select the applicant to which it will sell the line and file notice of its selection with the Commission and serve a copy on the applicants within 15 days of the service date of the Commission decision.

(j) Waiver. Prior to filing an initial or competing application, an applicant may file a petition to waive or clarify specific portions of part 1151. A decision by the Director of the Office of Proceedings granting or denying a petition for waiver or clarification will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Commission.

(k) Extension. Extensions of filing dates may be granted for good cause.

7. In § 1151.3, paragraphs (a)(17) and (b) are removed; paragraph (c) is redesignated as paragraph (b) and paragraphs (a) introductory text, (a)(14), (a)(16), and newly redesignated paragraph (b) are revised to read as follows:

§ 1151.3 Contents of application.

(a) The initial application and all competing applications must include the following information in the form of verified statements:

* * * * *

(14) If applicant requests Commission prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information:

(i) The railroad(s) involved;

(ii) the estimated revenues that will result from the division(s);

(iii) The total costs of operating the line segment purchased (including any trackage rights fees).

(iv) Information sufficient to allow the Commission to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year [1]; and

(v) Any other pertinent information.

* * * * *

(16) A certificate stating that the service requirements of § 1151.2(a) have been met.

(b) Applicant must make copies of the application available to interested parties upon request.

§ 1151.5 [Removed]

8. Section 1151.5 is removed.

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BILLING CODE 7035–01–M

[1] Gross ton-miles are calculated by adding the ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

Proposed Rules

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-91-415PR]

Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Pears Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1991–92 fiscal year (March 1–February 29) under Marketing Order No 917. The expenditures and assessment rate are needed by the Pear Commodity Committee (committee) established under the order to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and the order to operate.

DATES: Comments must be received by August 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted. Copies of material received will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919).

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major"rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 handlers of California pears subject to regulation under Marketing Order No. 917 and about 300 producers of pears in California. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those with annual receipts of less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the number of packages of fresh fruit expected to be shipped under the order. Because the rate is applied to actual shipments, it must be established at a level that will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The Pear Commodity Committee met June 25, 1991, and unanimously recommended 1991–92 marketing order expenditures of $1,298,824 and an assessment of $0.25 per 36-pound package or equivalent. In comparison, 1990–91 fiscal year expenditures were $1,126,800 and the assessment rate was $0.25 per 36-pound package or equivalent. Major committee expenditures projected for 1991–92, with actual 1990–91 expenditures in parenthesis, are: Salaries and employee benefits, $88,279 ($97,752); market development and promotion, $1,104,501 ($952,696); and uncollected assessment accounts, $5,000 ($9,256).

The committee estimates available 1991–92 marketing order income at $1,323,006. This amount is based on assessments totaling $990,000 (3,960,000 packages of assessable pears at $.025 per 36-pound package), less $5,000 in anticipated uncollected assessments. Assessment income would be supplemented with interest income estimated at $4,000, income from export development and research subsidies from State and Federal agencies estimated at $164,000, and a $75,000 grant from the Program Committee of the Pear Zone for fresh pear promotion.

In addition, the committee had $90,006 in reserves as of March 1, 1991, an amount well within the maximum authorized. Total projected income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 10 days is appropriate because establishing the level of expenses and assessment rate for this program should be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreements, Pears, Plums and peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 917 be amended as follows:

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 917.254 is added to read as follows:

§ 917.254 Expenses and assessment rate.

Expenses of $1,289,824 by the Pear Commodity Committee are authorized, and an assessment of $0.25 per 36-pound package or equivalent of assessable pears, is established for the fiscal year ending February 29, 1992. Unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: August 5, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18958 Filed 8–8–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No. 1440–91]

Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rulemaking amends those regulations relating to adjustment of status from a temporary (or nonimmigrant) classification to a permanent (or immigrant) one. These changes are proposed in order to facilitate implementation of the Immigration Act of 1990 (IMMACT), Public Law 101–649, November 29, 1990, and to eliminate provisions relating to sections of law under which aliens may no longer apply for benefits. The proposed rulemaking would simplify the adjustment of status regulations and improve the efficiency of the adjudications program.

DATES: Written comments must be received on or before September 9, 1991.

ADDRESSES: Written comments should be submitted in triplicate to the Record Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5304, 425 I Street NW., Washington, DC 20536. Include INS number 1440–91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone (202) 514–3946.

SUPPLEMENTARY INFORMATION: 8 CFR part 245 sets forth eligibility, documentation and other requirements for adjustment of status from a nonimmigrant to an immigrant under a number of provisions in the Immigration and Nationality Act ("the Act") and related laws. A number of those related laws only allowed applicants to file for benefits during a limited period of time which has now expired. Such former provisions of law include the proviso to the former section 203(a)(7) of the Act (which was replaced by the Refugee Act of 1980), the Nonimmigrant Alien Adjustment Act of 1982 (which required the applicant to file for benefits by September 30, 1983), the Indochina Refugee Adjustment Act of 1977 (which required the applicant to file for benefits by October 28, 1983), and the Cuban-Haitian Adjustment Act which required the applicant to file for benefits by November 6, 1988). Since all of these provisions have now expired, references to them are being eliminated from the regulations.

Secondly, the rulemaking will eliminate the provision allowing the simultaneous filing of a petition for employment-based immigrant visa classification and an application for adjustment of status. Under this proposed rulemaking, an application for adjustment based on a petition to classify an alien under the provisions of section 203(b) of the Act cannot be filed until that petition has been approved. This allows the Service to examine all such petitions through the four Service Centers where we are able to maintain higher standards of uniformity and shorter processing times. With the implementation of the multitude of changes in the law arising out of IMMACT, the need to maintain the higher standards and shorter processing times is more acute than ever. The resulting increase in efficiency of operations will benefit both the Service and the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Immigration and Nationality Act, Passports and visas.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186A, 1255 and 1257; 8 CFR part 2.

§ 245.1 [Amended]

2. Section 245.1 is amended in paragraph (b)(8) by removing the word "Any" and adding in its place the words "Except for an alien who is applying for residence under the provisions of section 133 of the Immigration Act of 1990, any".

§ 245.1 [Amended]

3. Section 245.1 is amended in paragraph (b)(10) by changing the reference to "203(a)(1) through 203(a)(6)" to "203(a) or 203(b)".

§ 245.1 [Amended]

4. Section 245.1 is amended in paragraph (b)(12) by adding "or 216A" after the citation "section 216".

5. Section 245.1 is amended by:

a. Revising paragraph (d)(1);

b. Removing paragraph (d)(2);

c. Redesignating paragraph (d)(3) as paragraph (d)(2);

d. Revising paragraph (f);

e. Removing paragraph (g);

f. Redesignating paragraph (h) as paragraph (g) and revising it to read as follows:

§ 245.1 Eligibility.

* * * * *

(d) * * *

(1) *Alien medical graduates.* Any alien who is a medical graduate for special immigrant classification under section 101(a)(27)(H) of the Act and is the beneficiary of an approved petition as required under section 204(a)(1)(E)(i) of the Act is eligible for adjustment of status. An accompanying spouse and children also may apply for adjustment of status under this section. Temporary absences from the United States for 30 days or less do not interrupt the continuous presence requirement during which the applicant was practicing or studying medicine. Temporary absence authorized under the Service's advance parole procedures will not be considered interruptive of continuous presence when the alien applies for adjustment of status.

* * * * *

(f) *Availability of immigrant visas under section 245 and priority dates—* (1) *Availability of immigrant visas under section 245.* An alien is ineligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him or her at the time the application is filed. If the applicant is a preference alien, the current Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers will be consulted to determine whether an immigrant visa is immediately available. An immigrant visa is considered available for accepting and processing the application Form I–485 if the preference category applicant has priority date on the waiting list which is no later than the date shown in the Bulletin (or the Bulletin shows that numbers for visa applicants in his or her category are current), and (if the applicant is seeking status pursuant to section 203(b) of the Act) the applicant presents evidence that the appropriate petition filed in his or her behalf has been approved. An immigrant visa is also considered immediately available if the applicant establishes eligibility for the benefits of Public Law 101–238. Information as to the immediate availability of an immigrant visa may be obtained at any Service office.

(2) *Priority dates.* The priority date of an applicant who is seeking the allotment of an immigrant visa number under one of the preference classes specified in sections 203(a) or 203(b) of the Act by virtue of a valid visa petition approved in his or her behalf shall be fixed by the date on which such approved was filed.

(g) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act), an alien son or daughter (as defined in section 216(g)(2) of the Act), an alien entrepreneur (as defined in section 216A(f)(1) of the Act), or an alien spouse or child (as defined in section 216A(f)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to the provisions of section 216 or 216A of the Act, as appropriate.

§ 245.2 [Amended]

6. Section 245.2 is amended in paragraph (a)(1) by removing the phrase "or section 101 or 104 of the Act of October 28, 1977," in the first and second sentences.

7. Section 245.2 is amended by removing paragraphs (a)(2)(i) and (a)(2)(iii), by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(i), by redesignating paragraph (a)(2)(iv) as paragraph (a)(2)(ii), and by revising the newly redesignated paragraph (a)(2)(i) to read as follows:

§ 245.2 Application.

(a) * * *

(2) * * *

(i) *Under section 245.* Before an application for adjustment of status under section 245 of the Act may be considered properly filed, a visa must be immediately available. If a visa would be immediately available upon approval of a visa petition, the application will not be considered properly filed unless such petition has first been approved. If an immediate relative petition filed for classification under section 201(b)(2)(A)(i) of the Act or a preference petition filed for classification under section 203(a) of the Act is submitted simultaneously with the adjustment application, the adjustment application shall be retained for processing only if approval of the visa petition would make a visa immediately available at the time of filing the adjustment application. If the visa petition is subsequently approved, the date of filing the adjustment application shall be deemed to be the date on which the accompanying petition was filed.

* * * * *

8. Section 245.2 is amended in paragraph (a)(3)(i) by removing the phrase "the Act of October 28, 1977," in the first sentence, by removing paragraph (a)(3)(iii), and by redesignating paragraph (a)(3)(iv) as paragraph (a)(3)(iii).

§ 245.2 [Amended]

9. Section 245.2 is amended by removing paragraph (a)(4)(iii) and redesignating paragraph (a)(4)(iv) as paragraph (a)(4)(iii).

§ 245.2 [Amended]

10. Section 245.2 is amended by removing paragraph (a)(5)(iii) and redesignating paragraph (a)(5)(iv) as paragraph (a)(5)(iii).

§ 245.2 [Amended]

11. Section 245.2 is amended by removing paragraphs (a) and (e) and by redesignating paragraphs (c) and (d) as paragraphs (b) and (c), repectively.

§ 245.4 [Removed]

12. Section 245.4 is removed.

§ 245.5 [Removed]

13. Section 245.5 is removed.

§ 245.6 [Removed]

14. Section 245.6 is removed.

§ 245.7 [Redesignated as § 245.4]

15. Section 245.7 is redesignated as § 245.4.

§ 245.8 [Redesignated as § 245.5 and Amended]

16. Section 245.8 is redesignated as § 245.5 and revised to read as follows:

§ 245.5 Medical examination.

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical

examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a non-immigrant fiance or fiancee of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1)(A)(ii) or (1)(A)(iii) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and part 235 of this chapter.

§ 245.9 [Redesignated as § 245.6 and Amended]

17. Section 245.9 is redesignated as § 245.6 and amended by changing the term "is filed" to "was filed" in the second sentence.

§ 245.10 [Redesignated as § 245.7]

18. Section 245.10 is redesignated as § 245.7.

Dated: July 2, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-18778 Filed 8-8-91; 8:45 am]

BILLING CODE 4410-10-M

INTER-AMERICAN FOUNDATION

22 CFR Part 1007

Claims Collection; Salary Offset

AGENCY: Inter-American Foundation.

ACTION: Proposed Rule.

SUMMARY: These regulations implement the collection Procedures of the Debt Collection Act of 1982, Public Law 97-365, codified in 5 U.S.C. 5514, which authorize the federal government to collect debts owed by a federal employee to the United States through salary offset.

DATES: Comments must be received on or before September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Adolfo A. Franco, Deputy General Counsel, 1515 Wilson Boulevard, Rosslyn, VA 22209, (703) 841-3894.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 40 FR 27470, codified in 5 CFR part 560, subpart K.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 805 (b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 22 CFR Part 1007

Administrative Offset, Administrative practice and procedure, Claims, Debt collection, Government employees, and Wages.

For the reasons set out in the Preamble Chapter X of title 22 of the Code of Federal Regulations is amended by adding part 1007 to read as follows:

PART 1007—SALARY OFFSET

Sec.

Authority: 5 U.S.C. 5514; E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K, and 22 U.S.C. 290f(e)(11).

§ 1007.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Inter-American Foundation (IAF) and to current employees of the Inter-American Foundation who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.;*

(2) The Social Security Act, 42 U.S.C. 301 *et seq.;*

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not Preclude an

employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1007.2 Definitions.

For the purposes of the part, the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

Creditor Agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after the required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the President of the Inter-American Foundation.

Paying Agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

President means the President of the Inter-American Foundation or the President's designee.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1007.3 Applicability.

(a) These regulations are to be followed when:

(1) The Inter-American Foundation is owed a debt by an individual currently employed by another federal agency;

(2) The Inter-American Foundation is owed a debt by an individual who is a current employee of the Inter-American Foundation; or

(3) The Inter-American Foundation employs an individual who owes a debt to another federal agency.

§ 1007.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice, signed by the President, of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.;*

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1007.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the President of the Inter-American Foundation stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the President no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1007.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1007.7 Coordinating offset with another Federal agency.

(a) *The Inter-American Foundation as the creditor agency.* (1) When the President determines that an employee of another federal agency owes a delinquent debt to the Inter-American Foundation, the President shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify to the paying agency in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that Foundation regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the President must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, the Foundation must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the Inter-American Foundation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of 5 CFR 550.1108 have been followed; and

(vi) If the employee has already separated and all the payments due from the paying agency have been paid, the President may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The Foundation as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Inter-American Foundation has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Inter-American Foundation shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Inter-American Foundation and before the debt is collected completely, the Inter-American Foundation must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

§ 1007.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the President's notice of intention to offset as provided in § 1007.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay interval for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payments in accordance with 31 U.S.C. 3716.

§ 1007.9 Refunds.

(a) The Inter-American Foundation will refund promptly any amounts deducted to satisfy debts owed to the IAF when the debt is waived, found not owed to the IAF, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by IAF to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1007.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1007.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 1007.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: August 2, 1991.

Adolfo A. Franco,

Acting General Counsel, Inter-American Foundation.

[FR Doc. 91-18820 Filed 8-8-91; 8:45 am]

BILLING CODE 7025-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment; Archaeological and Historic Preservation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 91-8) submitted consists of proposed changes to the Indiana Surface Mining rules concerning archaeological and historic preservation. The amendment is intended to provide rules to allow the director to implement the archaeological and historic preservation requirements contained in Public Law (Pub. L.) 108-1988 as amended

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 9, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on September 3, 1991; and requests to present oral testimony at the hearing must be

received on or before 4 p.m. on August 26, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone (317)226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianpolis, IN 46204. Telephone (317)232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Reike, Director, telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By an undated letter received by the OSM on July 10, 1991 (Administrative Record No. IND–1902), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12–0.5, 12–2, and 12–3. The proposed amendment is intended to provide State rules to implement and enforce the Indiana archaeological and historic preservation Statute at Public Law 108–1988 (SEA–121) as amended by Public Law 104–1990 (SEA–378) and SEA–154. These three statutes are presently being reviewed by the OSM as proposed program amendments.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contract the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on August 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been shceduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **"ADDRESSES"**. A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

August 1, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–18942 Filed 8–8–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program Amendment; Delegation of Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 91–9) consists of proposed changes to the Indiana rules provisions concerning delegation of authority by the Natural Resources Commission (the Commission). The amendment is intended to make changes to the delegations for programs administered by the Division of Reclamation.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 9, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on September 3, 1991; and requests to present oral testimony at the hearing must be

received on or before 4 p.m. on August 26, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone (317)226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone (317)232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated July 11, 1991, (Administrative Record Number IND–0914), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 0.7–3–5. The proposed amendment is part of Indiana's rules at ICA Title 310, article 0.7 and makes changes to the authority granted by the Commission to the Director and Deputy Director of the State Regulatory Authority.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommenations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on August 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified data until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES**". A summary of the meeting will be included in the Administrative Record.

List of Subjects in 20 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–18943 Filed 8–8–91; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for New Mexico's proposed rules pertain to protection of hydrologic balance; reclamation plans; transportation facilities; subsidence control; permit information requirements; performance standards for coal exploration; the protection of threatened and endangered species; revegetation; roads; cessation orders; and requirements for exemption. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations and to provide additional safeguards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t., August 26, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, telephone (505) 766–1486.

New Mexico Energy & Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, NM 87505, telephone (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office or telephone number (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program.

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **FEDERAL REGISTER** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment.

By letter dated January 16, 1991 (Administrative Record No. NM–623), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to letters dated May 11 and November 1, 1989, and February 7 and June 22, 1990, that OSM sent to New Mexico in accordance with 30 CFR 732.17(c) (Administrative Record Nos. NM–494, NM–550, NM–563, and NM–596).

The rules that New Mexico proposed to revise were: Coal Surface Mining Commission (CSMC) Rules 80–1–1–5, 11–17, and 11–19, ownership and control; CSMC Rules 80–1–7–13, 7–14, 11–29, and 30–11, permit information requirements; CSMC Rule 80–1–9–25, reclamation plans; CSMC Rules 80–1–9–37, 9–40, 19–15, 20–150, and 20–151, roads and transportation facilities; CSMC Rules 80–1–9–39, 20–121, and 20–124, subsidence control; CSMC Rules 80–1–11–20 and 11–24, permit rescission; CSMC Rules 80–1–12–10, 34–1, 34–2, 34–3, 34–4, 34–5, 34–6, 34–7, 34–8, 34–9, and 34–10, exemption for coal extraction incidental to the extraction of other minerals; CSMC Rule 80–1–19–17, coal exploration; CSMC Rule 80–1–20–93, coal processing waste; and CSMC Rules 80–1–20–116 and 20–117, revegetation.

OSM published a notice in the January 29, 1991, **Federal Register** (56 FR 3234) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM–626). The public comment period closed February 28, 1991.

By letter dated February 6, 1991, New Mexico submitted, on its own initiative, a proposed revision to CSMC Rule 80–1–20–97(b) pertaining to threatened and endangered species (Administrative Record No. NM–627) and requested that the proposed revision be included in the amendment it proposed on January 16, 1991. By letter dated March 26, 1991, New Mexico proposed further revisions to CSMC Rule 80–1–20–97(b) (Administrative Record No. NM–635).

During its review of the amendment, OSM identified concerns relating to CSMC Rule 80–1–9–25(c), reclamation plans for permanent and temporary impoundments; CSMC Rule 80–1–9–37, transportation facilities; CSMC Rule 80–1–9–39 (b) and (c), 20–121(a), and 20–124, subsidence control; CSMC 80–1–11–29(a), permit information requirements; CSMC Rule 80–1–19–15(c)(4), performance standards for coal exploration; CSMC Rule 80–1–20–93(e), coal processing waste; CSMC Rule 80–1–20–97 (b) and (c), protection of threatened and endangered species; CSMC Rules 80–1–20–116 and 20–117, revegetation; CSMC Rules 80–1–20–150(d)(1), roads; CSMC Rule 80–1–30–11(a), cessation orders; and CSMC Rule 80–1–34–6(a)(2), requirements for exemption. OSM notified New Mexico of the concerns by letter dated April 15, 1991 (Administrative Record No. NM–636).

New Mexico responded in a letter dated July 22, 1991 by submitting a revised amendment (Administrative Record No. NM–645). The regulations that new Mexico proposes to amend are: CSMC Rule 80–1–9–21(c), protection of the hydrologic balance; CSMC Rule 80–1–9–25 (b) and (e), reclamation plans related to sedimentation ponds and coal processing waste dams and embankments; CSMC Rule 80–1–9–37, transportation facilities; CSMC Rule 80–1–9–39 (b), (c) and (d), subsidence control; CSMC Rule 80–1–11–29 (a) and (d), permit information requirements; CSMC Rule 80–1–19–15(c), performance standards for coal exploration; CSMC Rule 80–1–20–97 (b) and (c), the protection of threatened and endangered species; CSMC Rules 80–1–20–116 and 20–117(c), revegetation; CSMC Rule 80–1–20–150, roads; CSMC Rule 80–1–30–11, cessation orders; and CSMC Rule 80–1–34–6, requirements for exemption

III. Public Comment Procedures.

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 2, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91–18944 Filed 8–8–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 51 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface mining

Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 9, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on September 3, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 26, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, telephone (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, telephone (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

By letter dated July 9, 1991 (Administrative Record No. OH–1546), the Director of OSM provided Ohio with clarification concerning OSM's position on the reclamation of abandoned mined lands by a mine operator in conjunction with surface coal mining and reclamation operations conducted by that operator. The Director noted that a contract for reclamation approved under title IV of SMCRA (or under an equivalent State AML program) is equivalent to a permit and bond and is thus consistent with the excess spoil disposal requirements of section 515 of SMCRA. State programs which issue such contracts under a non-Federally funded program must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project. Before issuing such contracts, States must first submit and receive OSM approval of the State policies and procedures applicable to such non-Federally funded contracts.

In response to the Director's letter, Ohio submitted proposed Program Amendment Number 51 by letter dated July 22, 1991 (Administrative Record No. OH–1547). The amendment proposes to add a new paragraph (H) to Ohio Administrative Code (OAC) rule 1501:13–9–07 to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area. This new paragraph (H) would read as follows:

(H) Excess spoil may be used outside the permit area to reclaim unreclaimed mined lands adjacent to the permit area under a reclamation contract executed pursuant to section 1513.18, 1513.27 or 1513.37 of the [Ohio] Revised Code, provided that:

(1) If the unreclaimed lands are abandoned mined lands, they are eligible for reclamation under section 1513.27 or 1513.37 of the [Ohio] Revised Code;

(2) The excess spoil is placed in an environmentally and technically sound manner; and

(3) The excess spoil is placed where it will not destroy or degrade features of environmental value.

As part of and in support of proposed Program Amendment Number 51, Ohio also submitted Administrative Record information on the relevant provisions of the Ohio Revised Code, a draft policy statement clarifying eligibility requirements and performance standards for off-permit spoil placement, and an example of a reclamation contract executed pursuant to section 1513.27 of the Ohio Revised Code.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 pm. on August 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**"

A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 29, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-18811 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Department of Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would revise statutory provisions pertaining to the review of mine permit applications, land use definitions, and standards for the Wyoming Game and Fish Commission in providing consultation on and approval of the reclamation of surface mined land for fish and wildlife habitat. The proposed amendment is intended to revise the State program to clarify ambiguities and improve operational efficiency.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t., August 26, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the Wyoming program, the proposed amendment, the additional explanatory information, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918; telephone (307) 261-5776.

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002; telephone (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office on telephone number (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Proposed Amendment

By letter dated March 21, 1991 (administrative record No. Wy-15-1), Wyoming submitted a proposed amendment to its program pursuant to SMCRA. Wyoming submitted the proposed amendment at its own initiative to clarify ambiguities and improve operational efficiency of its program.

Wyoming proposes to amend the following provisions of the Wyoming Environmental Quality Act: W.S. 35-11-406(h) (new language has been proposed for insertion that would preclude the Administrator from raising as issues any items not previously identified as deficient at the close of the first 150-day review period, unless the applicant in subsequent revisions significantly modifies the application); W.S. 35-11-103 (proposes the addition of definitions for fish and wildlife habitat and grazing land); and W.S. 35-11-402 (proposal would establish standards to be used by the Wyoming Game and Fish Commission in providing consultation on and approval of the reclamation of surface mined land for fish and wildlife habitat).

OSM published a notice in the April 5, 1991, **Federal Register** (56 FR 14041) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. WY-15-7). The public comment period closed May 6, 1991. A public meeting was requested and held on June 14, 1991. The summary notes for that meeting (administrative record No. WY-15-18) are available for public review at the locations listed under "**ADDRESSES**."

During its review of the amendment, OSM identified some concerns relating to the proposed statutory changes at W.S. 35-11-406(h), 35-11-103, and 35-11-402. OSM notified Wyoming of the concerns by letter dated July 1, 1991 (administrative record No. WY-15-19). Wyoming responded by submitting, in a letter dated July 10, 1991, additional explanatory information (Administrative record No. WY-15-20).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertaining only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 2, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-18945 Filed 8-8-91; 8:45 am]

DEPARTMENT OF DEFENSE

Office of the Inspector General

32 CFR Part 295

Office of the Inspector General, Freedom of Information Act Program

AGENCY: Office of the Inspector General (OIG), Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense, Office of the Inspector General has been designated a DoD Component for the purposes of responding to requests made pursuant to the Freedom of Information Act (FOIA). This proposed rule establishes the policy and procedures by which the public may request information from the Office of the Inspector General under the FOIA.

DATES: Written comments must be received by September 9, 1991.

ADDRESSES: Send comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, room 1016, 400 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: C. Sue Nelson, (703) 697–6035.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–28271 appearing on December 13, 1988, the Office of the Secretary of Defense published a notice announcing the redesignation of the Department of Defense, Office of the Inspector General as a DoD Component for responding to FOIA requests. The proposed rule that was published in FR Doc. 89–11237 appearing on March 17, 1989, was never finalized because of a change in the incumbent Inspector General, amendment of the Department of Defense Regulation implementing the FOIA, and the need for coordinating the amended portions of the Regulation within the Office of the Inspector General. This proposed rule replaces the prior proposed rule.

List of Subjects in 32 CFR Part 295

Freedom of Information

Accordingly, title 32, chapter 1, subchapter P, is proposed to be amended to add part 295 as follows:

PART 295—OFFICE OF THE INSPECTOR GENERAL, FREEDOM OF INFORMATION ACT PROGRAM

Sec.

Authority: 5 U.S.C. 552.

§ 295.1 Purpose.

This part establishes the policy and sets forth the procedures by which the public may obtain information and records from the Inspector General (IG) under the Freedom of Information Act (FOIA). It implements title 5, United States Code (U.S.C.) section 552, as amended by the Freedom of Information Reform Act of 1986, 32 CFR part 285 and 32 CFR part 286.

§ 295.2 Applicability.

The provisions of this part are applicable to all components of the Office of the Inspector General (OIG) and govern the procedures by which FOIA requests for information will be processed and records may be released under the FOIA.

§ 295.3 Definition of OIG records.

(a) The products of data compilation, such as books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in the OIG's possession and control at the time the FOIA request is made.

(b) The following are not included within the definition of the word "record":

(1) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(2) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of the OIG. Normally, computed software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in § 295.4(c).

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(4) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an OIG employee, and not distributed to any other OIG employee for their official use, or otherwise disseminated for official use.

(5) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(c) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(1) When the data is embedded within the software and can not be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(2) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of the OIG, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(3) See appendix B to this part for further information on release determinations of computer software.

(d) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. In such cases, the OIG will direct the requester to the appropriate source to obtain the record.

§ 295.4 Other definitions.

(a) *FOIA Request.* A written request for OIG records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, 32 CFR part 285 and 32 CFR part 286, or this part.

(b) *Initial Denial Authority (IDA).* The official who has been granted authority to withhold records requested under the FOIA, for one or more of the nine categories of records exempt from mandatory disclosure, by the head of the OIG Component designated by the IG to administer the IG FOIA Program.

(c) *Appellate Authority.* The IG or his or her designee having jurisdiction for this purpose over the record.

(d) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of the OIG to reverse an IDA decision to withhold all or part of a requested record or an IDA decision to

deny a request for waiver or reduction of fees.

(e) *Public Interest.* Public interest is official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA of informing citizens about what their Government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

§ 295.5 Policy.

(a) *General.* (1) It is the policy of the OIG to promote public trust by conducting its activities in an open manner, and by providing the public with the maximum amount of accurate and timely information concerning those activities, consistent with the need for security and adherence to other requirements of law and regulation.

(2) Records not specifically exempt from disclosure under the FOIA or prohibited by statutory or other regulatory requirements will, upon request, be made readily accessible to the public.

(3) Records that are specifically exempt from disclosure under the FOIA or prohibited by statutory or other regulatory requirements will be withheld from the public only upon the determination of the Initial Denial Authorities identified in § 295.6 of this part, or the designated Appellate Authority.

(b) *News Media Requests.* (1) Requests from news media representatives for records that would not be withheld if requested under the FOIA or prohibited from release under other statutory or regulatory authority, will be released promptly by the OIG element originating the record.

(2) Requests from news media representatives for records that are exempt from release under the FOIA, or prohibited from release under other statutory or regulatory authority will be provided to the Freedom of Information Act and Privacy Act (FOIA/PA) Division, Office of the Assistant Inspector General for Investigations, along with the requested records, for review and a release determination and the news media representatives will be so advised.

(3) Extracts of the nonexempt portions of such records may be prepared in response to a specific request from a news media representative but shall be coordinated for release with the FOIA/PA Division. Extracts shall be prepared in accordance with the sample at appendix to § 295.5.

(c) *Control System.* (1) A request for OIG records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this part.

(2) Any request for OIG records that either explicitly or implicitly cites the FOIA will be processed under the provisions set forth in this part, unless otherwise required by § 295.5(m) of this part. All such requests shall be forwarded to the FOIA/PA Division.

(d) *Promptness of Response.* (1) A request from a member of the public for OIG records will be responded to within 10 working days of the date of its receipt in the FOIA/PA Division, unless a delay is authorized.

(2) Receipt of the request will be acknowledged and the requester will be promptly advised of any additional information needed to assure compliance with procedures established in this Part. In the event there are a significant number of requests, e.g., 10 or more, the requests will be processed in order of date of receipt. This does not preclude the OIG from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. The OIG may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need will be determined at the discretion of the OIG.

(3) These provisions also apply to a request received on referral from another DoD Component or government agency and time limits will begin on the date of receipt in the OIG FOIA/PA Division.

(e) *Use of Exemptions.* It is OIG policy to make records publicly available unless they qualify for exemption under one or more of the nine exemptions. The OIG may elect to make a discretionary release, however, a discretionary release is generally not appropriate for records exempt under exemptions (b)(1), (b)(3), (b)(4), (b)(6) and (b)(7)(C). Exemptions (b)(4), (b)(6) and (b)(7)(C) can not be claimed when the requester is the submitter of the information. The categories of records which are exempt from release are identified in appendix B of this part.

(f) *For Official Use Only (FOUO).* The use of FOUO markings will be accomplished in accordance with the provisions of appendix A of this part, and exemptions (b)(2) through (b)(9) as set forth in appendix B of this part. Additional guidance will be provided to OIG elements, as needed, by the FOIA/PA Division.

(g) *Public Domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in the OIG Reading Room located in the FOIA/PA Division. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, or to an individual to whom the record pertains, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks to use the records in a private or personal capacity.

(h) *Creation of Records.* (1) A record must exist and be in the possession or control of the OIG at the time of the request to be considered subject to release under this part and the FOIA. Mere possession of a record does not presume OIG control and such records, or identifiable portions thereof, will be referred to the originating agency for a release determination and/or direct response to the requester. There is no obligation to create nor compile a record to satisfy a FOIA request; however, the OIG may compile a new record when doing so would result in a more useful response to the requester, or be less burdensome to the OIG than providing the existing records, and the requester does not object. The cost of creating or compiling such a record will not be charged to the requester unless the fee is equal to, or less than, the fee that would be charged for providing the existing record. Any fee assessments will be made in accordance with chapter VI of DoD 5400.7–R (32 CFR part 286).

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, the OIG will apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request will be processed. However, the request will not be processed where the capability to

respond does not exist without a significant expenditure of resources, thus not be normal business as usual approach.

(i) *Describing Records Sought.* (1) It is the responsibility of the member of the public requesting records to adequately identify the records. A member of the public must describe the records sought with sufficient information to permit the OIG to locate the records with a reasonable amount of effort, since the FOIA does not authorize "fishing expeditions." Descriptive information about a record may be divided into two broad categories:

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) When the OIG receives a request that does not "reasonably describe" the requested record with sufficient Category I information to permit the conduct of an organized nonrandom search, or sufficient Category II information to permit inference of the Category I elements needed to conduct such a search, the requester will be notified in writing of the defect and of the need for more specific identification of the records sought. The specificity letter will provide guidance in identifying the records sought and in reformulating the request to reduce the burden on the OIG in complying with the FOIA. The OIG is not obligated to act on requests until an adequate description is provided by the requester.

(3) When the OIG receives a request in which only personal identifiers, e.g., name and Social Security Account Number, are provided in connection with the request for records concerning the requester, only records retrievable by personal identifiers will be searched. The search for such records may be conducted under Privacy Act procedures. No record will be denied that is releasable under the FOIA.

(j) *Referrals.* (1) The OIG has the responsibility of protecting the identify of individuals who make protected disclosures of wrongdoing on the part of others, under the "Whistleblower Protection Acts". When a FOIA requester has identified himself/herself as the "Whistleblower" in the matter for which records are being sought, in accordance with § 295.7(b)(3) of this part, or the FOIA/PA Division can reasonably determine that the FOIA requester is the "Whistleblower", the individual's identity will continue to be protected in all of the following circumstances involving referrals, except to the extent that such protection will impede the release of responsive records to the requester. In such event, the requester will be advised of the impedance and offered the option of allowing himself/herself to be identified solely for the purpose of obtaining maximum release of records responsive to the FOIA request. If the requester chooses to continue anonymity, the request will be processed only to the extent that will allow continued protection of the individual's identity.

(1) The OIG will refer a FOIA request to another DoD Component or to a Government agency outside the DoD when the OIG has no records responsive to the request, but believes the other DoD Component or outside agency may have, and the other DoD Component or outside agency has confirmed that it holds the record. When the other DoD Component or outside agency agrees to the referral, the requester will be advised of the referral and that the OIG has no responsive records, with the following exceptions:

(i) If it is determined by the other DoD Component or outside agency that the existence or nonexistence of the record itself is classified, the OIG will inform the requester only that the OIG has no responsive record and no referral will take place.

(ii) If the record falls under one or more of the "Exclusions" under the FOIA (see appendix B of this part), as determined by the other DoD Component or outside agency, the OIG will advise the requester only that the OIG has no responsive record and no referral will take place.

(2) The OIG will refer a record, or portions of a record that holds but that was originated by another DoD Component or outside agency, or for a record that contains substantial information that originated with another DoD Component or outside agency, to that Component or agency (unless the agency is not subject to the FOIA) for a release determination and/or direct response to the requester. In any such case, direct coordination will be effected and concurrence obtained from the other Component or agency prior to the referral. A copy of the record will be provided to the Component or agency with the referral, and the requester will be notified of the referral, consistent with any security requirements or "Exclusion" provisions of the FOIA. The OIG will not, in any case, release or deny such records without prior consultation with the other DoD Component or outside agency. If the requester is the "Whistleblower", the record or portion of the record will be provided to the DoD Component or agency, with a request for a release determination and return of the record to the OIG for response to the requester.

(3) The OIG will refer a FOIA request for a classified record that it holds, but did not originate, to the originating DoD Component or outside agency (unless the agency is not subject to to the FOIA). If the record originated with the OIG but the classification is derivative, i.e., contains classified information that originated elsewhere and was incorporated in the OIG record, the record will be referred to the originating authority with a recommendation for release; or, after consultation with the originating authority, with a request for a declassification review and/or release determination and return of the record. If the requester is the "Whistleblower", the record will be provided to the originating authority with a request for a release determination and return of the record to the OIG for response to the requester.

(4) The OIG may also refer a request for a record that was originated by the OIG for the use of another DoD Component or outside agency, to that Component or agency with a recommendation for release, after any necessary coordination. The requester will be notified of such action consistent with any security requirements or "Exclusion" provisions of the FOIA.

(5) A FOIA request for investigative, intelligence, or any other type of record on loan from another DoD Component or outside agency to the OIG for a specific purpose will be referred to the DoD Component or outside agency that provided the records, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside Component or agency desires anonymity as determined through coordination, the OIG will respond directly to the requester.

(6) A FOIA request for a record, or portions of a record, held by the OIG, that originated with a non-U.S. government agency that is not subject to the FOIA, will be responded to by the OIG.

(7) Notwithstanding anything to the contrary in this section, all requesters seeking National Security Council (NSC) or White House documents will be advised that they should write directly to the NSC or White House for such documents. Should the requester insist upon an OIG search for these records, the OIG will conduct an appropriate search pursuant to the FOIA. OIG/DoD

documents in which the NSC or White House has a concurrent reviewing interest will be forwarded by the FOIA/PA Division to the Director, Freedom of Information and Security Review (DFOISR), Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. The FOIA/PA Division will forward any documents found in OIG files that are responsive to the FOIA request to DFOISR, OASD(PA) for their coordination with the NSC or White House, and return to the OIG with a release determination for final processing of the request.

(8) On occasion, the OIG receives FOIA requests for General Accounting Office (GAO) documents containing OIG information. Even though the GAO is outside of the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received directly from the public, or on referral from the GAO, will be processed under the provisions of the FOIA.

(k) *Authentication of Records.* Records provided under this Part will be authenticated, upon written request, to fulfill an official Government or other legal function. This service is in addition to that required under the FOIA and is not included in the FOIA fee schedule; therefore, a fee of $5.20 may be charged for each such authentication.

(l) *Records Management.* FOIA records shall be maintained and disposed of in accordance with Inspector General Defense Manual (IGDM) 5015.2,[1] "Records Management Program".

(m) *Relationship Between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) Where requesters seek records about themselves which are contained in a PA system of records and cite or imply the PA, the OIG will process their requests under the provisions of the PA.

(2) Where requesters seek records about themselves which are not contained in a PA system of records and cite or imply the PA, the requests will be processed under the provisions of the FOIA, since they have no access under the PA.

(3) Where requesters seek records about themselves that are contained in a PA system of records and cite or imply the FOIA or both Acts, the requests will be processed under the time limits of the FOIA and the exemptions and fees of the PA. This is appropriate since greater access will generally be received under the PA.

(4) Where requesters seek agency records (as opposed to personal records) and cite or imply the PA and FOIA, or where requesters cite or imply only the FOIA, the requests will be processed under the FOIA.

(5) Requesters will be advised in the final responses to their requests why a particular Act was used in processing their requests.

(n) *Index and "(a)(2)" Materials.* (1) No order, opinion, statement of policy, interpretation, staff manual or instruction (except as indicated below) issued after July 4, 1967, which is not indexed and either made available or published, may be relied upon, used, or cited as a precedent against any member of the public unless that individual has actual and timely notice of the contents of such materials. Such actual and timely notice may not be after-the-fact; i.e., after the individual has suffered some adverse effect. Materials identified as "(a)(2)" are:

(i) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(ii) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register.**

(iii) Administrative staff manuals and instructions, or portions thereof, that establish OIG policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the OIG. Examples of manuals and instructions not normally made available are:

(A) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(B) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(2) Thus, materials considered to meet the preceding definition of the FOIA "(a)(2)" requirements will be made available for public inspection and copying upon written request to the address indicated in § 295.7(b)(1) of this part, unless such materials have been published and are offered for sale or subscription. Upon receipt of the request, arrangements will be made at a time convenient to both the requester and the OIG, for the review and copying. If the publishing activity is out of stock of the published, for sale material and does not intend to reprint, then the preceding procedure will apply to the published material as well.

(3) When appropriate, the cost of copying any "(a)(2)" materials will be imposed upon the individual requesting the copy in accordance with chapter VI of DoD 5400.7–R (32 CFR part 286).

(4) The OIG will prepare an index of "(a)(2)" materials, or supplement thereto, arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Separate case name and numbering arrangements may be added for OIG convenience.

(5) The IG has determined that it is not practical nor feasible to prepare an index of the "(a)(2)" materials on a quarterly basis, nor to publish the annual "IG Publications Index" in the **Federal Register** because of the volume. This index is available to the public at no cost upon written request to: Acquisition and Resources administration Directorate, Publications management Branch, room 413, 400 Army Navy Drive, Arlington, Virginia 22202–2884. It may be necessary to deny all or portions of some documents listed in the index that fall within one or more exemptions of the FOIA.

(o) *Fees and Fee Waivers.* (1) Fees will be assessed under the FOIA as set forth in chapter VI of DoD 5400.7–R (32 CFR part 286).

(2) Requesters must indicate their willingness to pay fees in their initial FOIA request. If a waiver of fees is requested, a statement regarding their willingness to pay fees in the event a waiver or reduction of fees is denied is still required. Any requests not containing a statement regarding a willingness to pay assessed fees will not be processed and the requester will be so advised.

(3) Fees will not be required to be paid in advance of processing the request for release of the records requested except:

[1] Copies may be obtained, if needed, from the Information and Operations Support Directorate, Publications Management Branch, room 420, 400 Army Navy Drive, Arlington, VA 22202–2884.

(i) When the requester is known to be in default of payment of fees incurred in connection with a previous request.

(ii) When the total amount of estimated fees assessable to the requester exceeds $250.00 and waiver is not appropriate, a "good faith" deposit of half of the amount of the estimated fees may be required before completing the processing of the request, or providing the requested records, in the case of a requester with no history of payment. Where the requester has a history of prompt payment, the OIG will notify the requester of the likely cost and obtain satisfactory assurance of full payment.

(4) When the OIG has completed all work on a request and the documents are ready for release, advance payment may be requested before forwarding the documents if there is no payment history on the requester. Where there is a history of prompt payment by the requester. Where there is a history of prompt payment by the requester, the OIG will not hold documents ready for release pending payment.

(5) Fee waivers will be granted on a case-by-case basis when the OIG determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the OIG and the Department of Defense; and, is not primarily in the commercial interest of the requester. In any request for waiver of fees, the requester must provide sufficient information to enable the IDA to make a proper determination of whether or not the fees should be waived.

(6) In cases where the requester fails to provide sufficient persuasive information upon which to make a determination for waiver of the fees, the requester shall be so informed and given the opportunity to submit additional justification. Absent such justification, the requester may be required to pay fees appropriate to his/her category, if provision of the information is determined not to be in the public interest of benefit.

(7) Payments of fees must be by check or U.S. Postal money order made payable to the Treasurer of the United States. Cash payments cannot be accepted.

(p) *Appeals and Judicial Action.* (1) If the designated IDA declines to provide a requested record because the official considers it exempt from disclosure under one or more of the nine exemptions of the FOIA, that decision may be appealed by the requester to the designated Appellate Authority. The appeal should be submitted in writing by the requester within 60 calendar days after the date of the initial denial letter. In cases where incremental release actions have been taken on an initial request, the time for the appeal will not begin until the date of the last denial of release letter.

(2) A "no record" finding may be considered to be adverse, and if so interpreted by the requester, may be appealed using the normal OIG appeal procedures. The OIG will conduct an additional search of files, based on the receipt of an appeal to a "no record" response, as a part of the appellate process.

(3) All final decisions rendered on appeals will be made to the requesters in writing by the Appellate Authority, after consultation with the Office of General Counsel (OGC) representative to the OIG, and other appropriate OIG elements.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. The appeal will be deemed to have been received when it reaches the FOIA/PA Division, for administrative processing on behalf of the Appellate Authority. Misdirected appeals are to be referred expeditiously to the FOIA/PA Division.

(5) A requester will be deemed to have exhausted his/her administrative remedies after he/she has been denied the requested record or waiver/reduction of fees, by the designated Appellate Authority, or when the OIG FOIA/PA Division fails to respond to the request within the time limits prescribed by the FOIA, DoD 5400.7–R (32 CFR part 286) and this part. The requester may then seek judicial action from a U.S. District Court in the district in which the requester resides, has a principal place of business, in the district in which the record is located, or in the District of Columbia.

(6) Records that are denied on appeal shall be retained for a period of six years, in accordance with IGDM 5015.2,[2] "Records Management Manual," to meet the statute of limitations of claims requirements.

Appendix to § 295.5—Extract

The material contained herein is an Extract of information from (Name of Original Document), which has been determined to be in the public domain. The remaining material not provided herein may be requested under the provisions of the Freedom of Information Act.

[2] See footnote 1 to § 295.5(l).

§ 295.6 Responsibilities.

(a) The Assistant Inspector General (AIG) for investigations is responsible for the overall implementation and administration of the FOIA program in the OIG, and for the designation of the IDAs.

(b) The Director, Investigative Support is designated as an IDA and is responsible for the overall operation of the FOIA program in the OIG.

(c) The Assistant Director, FOIA/PA Division, Investigative Support Directorate is designated as an IDA and will:

(1) Serve as the point of contact on all FOIA matters for the OIG.

(2) Coordinate and respond to all requests received from the public for records in accordance with the policy established and procedures set forth in this part, and in all applicable DoD directives, regulations and instructions.

(3) Coordinate requests received from the public for records to the extent considered necessary, with the DFOISR, OASD(PA), other DoD Components, other Federal agencies, and other OIG elements.

(4) Arrange for the collection of fees as prescribed by the policy established in this Part.

(5) Maintain the FOIA case files in accordance with IGD Manual (IGDM) 5015.2,[3] "Records Management Program".

(6) Recommend action to be taken on all appeals of fees, appeals of fee waiver denials, and appeals of denials to access of records requested, to the Appellate Authority.

(7) Review OIG publications to assure that those which meet the FOIA "(a)(1)" and "(a)(2)" requirements for publication in the **Federal Register** are prepared in proper form and transmitted promptly for publication in the **Federal Register**.

(8) Maintain copies of material required to be made available under the "(a)(2)" provisions of the FOIA for examination and copying by the public, and provide the required FOIA Reading Room for use by the public in doing so.

(9) Establish a training program of OIG personnel who are involved in preparing responsive records for release to the public under the FOIA.

(10) Prepare the Annual Report on the FOIA for forwarding to DFOISR, OASD(PA) as required by 32 CFR part 286.

(d) The AIGs and the Director, IG Regional Office-Europe will:

[3] See footnote 1 to § 295.5(l).

(1) Comply with, and assure compliance by all of their subcomponents with, the policy established and the procedures set forth in this Part.

(2) Appoint a Point of Contact (POC) to interact with the FOIA/PA Division on all FOIA matters, and notify the FOIA/PA Division of any changes in the appointment.

(3) Provide all records responsive to a request as directed by the FOIA/PA Division.

(4) Recommend release/denial action to be taken, indicate applicable exemptions, and provide appropriate rationales.

(e) The Freedom of Information Act Appellate Authority is designated by the Inspector General and will:

(1) Determine the action to be taken on all appeals made by the public of fees, fee waiver/reduction denials, and access denials in accordance with chapter V, section 3, of DoD 5400.7–R (32 CFR part 286).

(2) Coordinate all appellate decisions with the Office of General Counsel, Assistant General Counsel (Fiscal and Inspector General).

(f) The AIG for Administration and Information Management will:

(1) Prepare annually an index of IG publications, statements and documents pertaining to any matter issued, adopted, or promulgated and required to be made available to the public by publication or sale.

(2) Establish and implement any necessary procedures to effect disciplinary action recommended by the Special Counsel of the Merit System Protection Board in cases involving the arbitrary and capricious withholding of information and records requested under the FOIA as required by chapter V, section 4, of DoD 5400.7–R (32 CFR part 286).

§ 295.7 Procedures.

(a) *General.* The provisions of the FOIA are reserved for persons with private interests as opposed to Federal governmental agencies seeking official information. The procedures for making requests, whether as a private party or governmental representative, are set forth below.

(b) *Requests from Private Parties.* (1) Members of the public may make requests in writing for copies of records, or permission to examine or copy records, directly to the FOIA/PA Division addressed to: Assistant Director, FOIA/PA Division, OAIG for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884.

(2) Requests must identify each record sought with sufficient specificity to enable the custodian to locate the record with a reasonable amount of effort. Requesters should provide such information as where the record originated and by whom, its subject matter, its approximate date or timeframe, which element of the OIG is likely to have custodianship, or any other similar information that would assist in locating the record. Requests must also contain a statement regarding willingness to pay fees.

(3) A request from an individual who made an allegation of wrongdoing to the IG, or any protected disclosure under the "Whistleblower Protection Acts," and who is seeking the results of any investigation or inquiry conducted into the allegation, should identify him/herself as the "Whistleblower" in the request. The request should indicate whether he/she wishes to continue anonymity, should be notarized to avoid the risk of losing the anonymity, and should contain a statement regarding willingness to pay fees.

(4) A request for a personal record or investigative record pertaining to the individual making the request, that is in a system of records whether nonexempt or exempted from mandatory release under the Privacy Act, must be notarized to avoid the risk of invasion of personal privacy. In any such request, the individual may designate another individual to act as his/her representative in making the request and in receiving the records on his/her behalf; however the authorization must be in writing, specifically name the representative and kinds of records authorized to be provided, and be notarized to avoid the risk of invasion of personal privacy.

(5) A request for a record that was obtained from a non-U.S. Government source, and that is subject to exemption (b)(4) under the FOIA, will be released to the individual or firm making the request without further exception, if:

(i) The individual or firm is clearly the submitter of the information and/or is clearly acting on behalf of the submitter in making the request.

(ii) The request contains a statement from a company official or other representative of the submitter clearly capable of certifying that the requester is acting on behalf of the submitter of the information in making the request; i.e., a Vice-President certifies on his/her company letterhead that XYZ Law Firm is acting on behalf of the company in requesting copies of documents submitted to the government by the company. A mere assertion by the requester that the requester is acting on behalf of the submitter in making the request will not be honored, if it can not be readily verified through records available to the OIG.

(c) *Requests from Government Officials.* (1) Requests from officials of State, or local Governments for OIG records will be considered the same as any other requester, except where the request is for a personal record in a system of records subject to the Privacy Act, in which case the provisions of DoD 5400.11–R (32 CFR part 286a) apply.

(2) Requests from members of Congress, or their staffs, not seeking records on behalf of a Congressional Committee, Subcommittee, or either House sitting as a whole, will be considered the same as any other requester. Requests from members of Congress, or their staffs, made on behalf of their constituents will also be considered the same as any other requester.

(3) Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Misdirected Requests.* Requests misdirected to other OIG elements will be forwarded promptly to the FOIA/PA Division. The statutory period allowed for response to a request misdirected by the requester shall not begin until the request is received in the FOIA/PA Division. The OIG components and field elements receiving misdirected requests should advise the requester that the request is being forwarded to the office having the authority to act on and respond to the request.

(e) *Privileged Release to Officials.* (1) Subject to DoD 5200.1-R,[4] "Information Security Program Regulation," applicable to classified information, DoD Directive 5400.11 (32 CFR part 286a), applicable to personal privacy or other applicable law, records exempt from release under appendix B of this part may be authenticated and released, without requiring release to other FOIA requesters, in accordance with OIG rules to U.S. Government officials requesting them on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4,[5] "Provision of Information to Congress," and this part.

[4] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[5] See footnote 4 to § 295.7(e).

(ii) To the Federal courts whenever ordered by officers of the court as necessary for the proper administration of justice

(iii) To other Federal agencies both executive and administrative as determined by the IG or the IG's designee.

(2) On all such releases, the officials receiving records under the above provisions will be informed in writing that the records are exempt from public release under the FOIA and are privileged. The OIG components will also advise the receiving officials of any special handling instructions.

(f) *Processing Requests.* (1) Upon receipt in the FOIA/PA Division, a request for records will be assigned a control number, logged, and reviewed for adequacy and compliance with the procedures for submitting requests outlined in § 295.7(b).

(2) If the request does not meet the adequacy of description test, contain a statement regarding fees, or contain a notarized signature/authorization or a certification of submitter representation, if applicable; the request will be acknowledged as having been received and the requester will be notified of the defect and advised of the means necessary to correct the defect and comply with the procedures. If the requester does not correct the defect within the time allowed (generally 30 calendar days) in the defect notice, the following actions will be taken:

(i) Where the request does not meet the adequacy of description test, the request will be administratively closed and the requester so advised.

(ii) Where the request meets the adequacy of description test but fails to comply with the remaining procedural requirements, and the time allowed in the defect notice for compliance by the requester has elapsed, the request will be processed to the extent possible consistent with DoD 5400.7–R (32 CFR part 286) and this part.

(3) When it is determined that a request complies with all applicable procedures, the necessary search and collection of responsive records will be initiated through the Component(s) of the OIG likely to have custodianship of the sought records.

(4) Where the appropriate OIG Component has determined that no record responsive to the request exists, the POC for the OIG component will so advise the FOIA/PA Division within the due date assigned to the POC. The requester will be notified in writing by the IDA, within 10 working days from the date of receipt of the request, that no responsive records exist; and, of the right and means by which to appeal the no record response as an adverse determination.

(5) When it is determined that the records sought are part of an ongoing audit, inspection, or investigation, the requester will be advised of such (subject to the "Exclusions" under the FOIA identified in appendix B, of this part). The requester will be informed of the estimated timeframe for completion of the ongoing audit, inspection, or investigation and asked if he/she wishes to withdraw the request and resubmit it upon completion of the ongoing process. If the requester chooses not to withdraw the request, the processing will be continued and an appropriate release determination will be made, consistent with the statutory provisions of the FOIA.

(6) When responsive records have been located, the POC for the OIG element having the records will forward the records to the FOIA/PA Division with a recommendation for release on SD Form 472, "Request Information Sheet," along with a completed DD Form 2086, Record of Freedom of Information (FOI) Processing Cost." The records will be reviewed and an initial determination to release or deny will be made.

(g) *Initial Determinations.* (1) The initial determination of whether to make a record available upon request may be made only by the IDAs designated by the IG in this part. Further, the number of IDAs designated by the IG will be limited and based on a balance of the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) Other than statutory denials, there are six other reasons for not complying with a request for a record:

(i) The request is transferred to another DoD component or Federal agency.

(ii) The request is withdrawn by the requester.

(iii) The information requested is not a record within the meaning of the FOIA and § 295.3(a) of this part.

(iv) A record has not been described with sufficient particularly to enable theso that OIG to locate it by conducting a reasonable search.

(v) The requester has failed unreasonably to comply with the procedural requirements, including the payment of fees, imposed by 32 CFR part 286 and this part.

(vi) The OIG has determined through knowledge of its files and reasonable search efforts that it neither controls nor possesses the requested record.

(3) Initial determinations to release or deny a record normally will be made and the decision reported to the requester within 10 working days, provided that the requester has complied with the preliminary procedural requirements.

(4) When requests are denied in whole or in part, the requester will be informed in writing of the reasons for the denial, the identity of the official making the denial, the right of appeal of the decision, and the identity and address of the official to whom an appeal may be made.

(5) The explanation of the substantive basis for a denial will include specific citation of the statutory exemption applied under provisions of the FOIA. Mere reference to a classification or to a "For Official Use Only" marking will not constitute a basis for invoking an exemption. When the initial denial is based in whole or in part on a security classification, the explanation will include a summary of the applicable criteria for the classification.

(h) *Denial Tests.* (1) To deny a requested record that is in the possession and control of the OIG, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in chapter 111 of DoD 5400.7–R (32 CFR part 286), and this part. No OIG record may be otherwise withheld from the public, whether in whole or in part, except as determined by the designated IDAs in accordance with FOIA exemptions.

(2) Although portions of some records may be denied, the remaining reasonable segregable portions will be released to the requester when it can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the IDA will advise the requester of that determination.

(i) *Extension of Time.* (1) In unusual circumstances, responsive records may be located by the office having custodianship over the record, but the records can not be made immediately available to the FOIA/PA Division, or the FOIA/PA Division can not make them immediately available to the requester. The unusual circumstances justifying the delay will be the result of the following:

(i) The requested record is located in whole or in part at another geographic location than that of the FOIA/PA Division.

(ii) The request requires the collection and/or evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of the FOIA and this Part or should be released as a matter of discretion.

(2) In any such event, efforts will be made to negotiate an informal extension in time with the requester by the FOIA/PA Division. If the requester chooses not to agree informally to an extension in time, a written explanation of the reasons for delay will be provided to the requester and the requester will be asked to await a substantive response by an anticipated date.

(j) *Fee Assessments.* (1) When it is determined that the fees assessable to a request undergoing final processing may exceed the limit established by the requester, or may be in excess of $250, the processing will be discontinued and the requester notified so that he/she may advise of his/her desire to continue.

(2) If a "good faith" deposit is required, the requester will be allowed a reasonable time (generally 30 calendar days) in which to provide payment. If the requester fails to provide the "good faith" deposit within the time allowed, the request will be closed and the requester so notified.

(3) In all other cases, the requester will be notified of any fees due at the time the requested records are provided to the requester, and allowed a reasonable time (generally 30 calendar days) in which to pay the fees.

(4) If the requester fails to pay the fees in the time allowed, a notice of nonpayment will be placed in the formal control system and no further FOIA requests from the requester will be honored until the fees have been paid.

(k) *Records of Non-U.S. Government Sources.* (1) When it is determined that the records or data contained within the records responsive to a request were obtained from a non-U.S. Government source by the OIG, and the requester is not the submitter of the non-U.S. Government record nor acting as the submitter's representative; and it is further determined the source or submitter may have a valid objection to release of the material, the submitter will be promptly notified of the request and afforded a reasonable time (generally 30 calendar days) to present any objections to the release.

(2) This procedure is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or data was submitted by the non-U.S. Government source with the actual or presumptive knowledge of the source, and established that it would be made available to the public upon request, there is no requirement to notify the source.

(3) All objections will be evaluated. When a substantial issue has been raised, the OIG may seek additional information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making a determination.

(4) The OIG will not ordinarily exercise its discretionary authority to release information clearly meeting the exemption (b)(4) criteria. Further, the final decision to disclose information not deemed to clearly meet exemption (b)(4) criteria will be made by an official equivalent in rank or greater to the official who would make the decision to withhold that data under a FOIA appeal.

(5) When the source or submitter advises of the intent to seek a restraining order or to take court action to prevent release of the data, the requester will be notified and action will not be taken on the request until after the outcome of the court action is known. Then the requester brings court action to compel disclosure, the source shall be promptly notified of this action.

(6) These procedures also apply to any non-U.S. Government record in the possession and control of the OIG from multi-national organizations,such as the North Atlantic Treaty Organization (NATO) and the North American Aerospace Defense Command (NORAD), or foreign governments. Coordination of such FOIA requests with foreign governments will be made through the Department of State by the FOIA/PA Division.

(l) *Coordination with Department of Justice.* (1) Where the custodian of an OIG element determines that records responsive to a FOIA request are pertinent to pending or potential litigation involving the United States, the FOIA/PA POC for the element shall promptly notify the FOIA/PA Division so that the necessary coordination can be effected with the Office of General Counsel (OGC) representative to the IG.

(2) The OGC representative shall effect all necessary coordination with the United States Attorney and/or Department of Justice prior to any release of such records.

(m) *Procedures for Appeals.* (1) A requester may appeal the initial decision to deny access to requested records. In writing, to the designated OIG Appellate Authority. The requester may also appeal a no record determination, any fees assessed and the denial of a request for waiver/reduction of fees. All such appeals should be made no later than 60 calendar days after the date of initial denial letter or letter of advisement regarding fees.

(2) All appeals should provide sufficient information and justification upon which a determination may be made by the Appellate Authority as to whether to grant or deny the appeal; or, in the event of a "no record determination," sufficient information and/or justification upon which additional record searches may be based. A copy of the initial request and initial denial, and "no record" or fee advisement letter should be included.

(3) The FOIA/PA Division administers the appeals for the Appellate Authority. All appeals should be addressed to the Assistant Director, FOIA/PA Division, OAIG for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884.

(4) Upon receipt in the FOIA/PA Division, the appeal will be assigned a control number, logged, and prepared for provision to the Appellate Authority for a final determination. Receipt will be Acknowledge in writing within 10 working days and the requester advised of any additional time needed due to the unusual circumstances described in § 295.7(i) of this part.

(5) If additional time is required, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request. If no additional time is required, the requester will be advised in writing of the final decision within 20 working days.

(6) If the appeal is approved in part or in whole, or responsive records located upon additional search, the requester will be informed and promptly provided any records determined to be releasable.

(7) If "no records" can be located in response to the appeal, the requester will be informed that no records were located, of the identify of the official making the final determination, and of the right to judicial review.

(8) If the appeal of the initial denial of responsive records is denied in part or in whole, the requester will be advised of the applicable statutory exemption or exemptions invoked under the provision of the FOIA for the denial, the identity of the official making the final determination, that meaningful portions of any denied records were not reasonably segregable, and of the right to judicial review.

(9) When the final refusal is based in whole or in part on a security

classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with an explanation of how that review confirmed the continuity validity of the security classification.

(10) Final refusal involving issues not previously resolved or that the OIG knows to be inconsistent with rulings of other DoD Components ordinarily will not be made before consultation with the Assistant General Counsel (Fiscal and Inspector General), OGC, DoD.

(11) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530 after coordination with the Assistant General Counsel (Fiscal and Inspector General), OGC, DoD.

§ 295.8 Annual report.

The FOIA Annual Report, assigned Report Control System DD–PA (A) 1365, will be prepared by the FOIA/PA Division for the preceding calendar year and submitted to the Assistant Secretary of Defense (PA) on or before February 1 of each year. The report will be compiled and formatted in accordance with chapter VII, DoD 5400.7–R (32 CFR part 286).

§ 295.9 Organization and mission.

(a) The organization of the OIG includes the Headquarters located in Arlington, Virginia, consisting of the Inspector General, Deputy Inspector General, the Offices of the Assistant Inspector (AIG) for Analysis and Followup, the AIG for Audit Policy and Oversight, the AIG for Auditing with its subordinate field elements located throughout the Continental United States (CONUS), the AIG for Investigations with its field elements located throughout the CONUS and Europe, the AIG for Administration and Information Management, the AIG for Departmental Inquiries, the AIG for Inspections, and the Director, IG Regional Office-Europe (IGROE) located in Wiesbaden, Germany. The IGROE has representatives assigned from the Offices of the AIG for Investigations, the AIG for Inspections, the AIG for Auditing and the AIG for Departmental Inquiries, who fulfill the missions of their respective components.

(b) The "Organization and Staff Listing" (Inspector General, Defense List (IGDL) 1400.7);[6] provides organization charts for the OIG elements and mailing addresses of all OIG operating locations and will be made available to the public upon written request.

(c) As an independent and objective office in the Department of Defense (DoD) the mission of the of the OIG is to:

(1) Conduct, supervise, monitor, and initiate audits, inspections and investigations relating to programs and operations of the DoD.

(2) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations.

(3) Provide a means for keeping the Secretary of Defense and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(4) Further information regarding the responsibilities and functions of the IG is encompassed in Public Law 95–452, the "Inspector General Act of 1978," as amended and 32 CFR part 373.

Appendix A to Part 295—For Official Use Only (FOUO)

I. General Provisions

A. General. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions (b)(2) through (b)(9) shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

B. Prior FOUO Application. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. when such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

C. Historical Papers. Records such as notes, working papers, and drafts retained as historical evidence of actions enjoy no special status apart from the exemptions under the FOIA.

D. Time to Mark Records. The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

E. Distribution Statement. Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24,[1] "Distribution Statements on Technical Documents", shall bear that statement and may be marked FOUO, as appropriate.

II. Markings

A. Location of Markings: (1) An unclassified document containing FOUO information shall be marked "For Official use Only" at the bottom on the outside of the front cover (if any), on each page continuing FOUO information, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) The FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * * * apply

III. Dissemination and Transmission

A. Release and Transmission Procedures. Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) The FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) The DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches fulfill a Government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use

[6] See footnote 1 to § 295.5(1).

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4,[2] "Provision of Information to Congress". Release to the GAO is governed by DoD Directive 7650.1,[3] "General Accounting Office Access to Records". Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

B. Transporting FOUO information. Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

C. Electrically Transmitted Messages. Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviated "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP–121 (United States Supplement 1) for FOUO information.

IV. Safeguarding FOUO Information

A. During Duty Hours. During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

B. During Non-duty Hours. At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Public Law 86–36, National Security Agency Act shall meet the safeguards outlined for that group of records.

V. Termination, Disposal and Unauthorized Disclosures

A. Termination. The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" makings, but records in file or storage need not be retrieved solely for that purpose.

B. Disposal. (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33, as implemented by Inspector General Defense Manual (IGDM) 5015.2,[4] "Records Management Program".

C. Unauthorized Disclosure. The unauthorized disclosure of FOUO records does not constitute as unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Appendix B to Part 295—Exemptions

I. General

The exemptions listed apply to categories of records that may be withheld in whole or in part from public disclosure, unless otherwise prescribed by law. A discretionary release (see also § 295.5(e) of this part) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying the exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. The examples provided of the types of records that may be exempted from release are not at all inclusive.

II. FOIA Exemptions

A. Exemption (b)(1). Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R [1] (32 CFR part 159a), "Information Security Program Regulation". Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, section 2–204f, apply. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, the OIG shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response will be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist will itself disclose national security information.

(2) information that concerns one or more of the classification categories established by executive order and DoD 5200.1–R (32 CFR part 159a) shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

B. Exemption (b)(2). Those related solely to the internal personnel rules and practices of DoD or the OIG. This exemption has two profiles, high (b)(2) and low (b)(2).

(1) Records qualifying under high (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records, thereby substantially hindering the effective performance of a significant function of the DoD or OIG. Examples include:

(a) Those operating rules, guidelines, and manuals, for DoD and OIG investigators, inspectors, auditors, or examiners that must remain privileged in order for the OIG to fulfill a legal requirement.

(b) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualification of candidates for employment, entrance on duty, advancement, or promotion.

(c) Computer software meeting the standards of § 295.3(c) of this part, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include: rules of personnel's use of parking facilities or regulation of lunch hours,

[2] See footnote 1 to section I.E. of this appendix.

[3] See footnote 1 to section I.E. of this appendix.

[4] Copies may be obtained, if needed, from the Information and Operations Support Directorate, Publications Management Branch, room 420, 400 Army Navy Drive, Arlington, VA 22202–2884.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

C. Exemption (b)(3). Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(1) National Security Agency Act information exemption, Public Law 86–36, section 6.

(2) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(4) Communication intelligence, 18 U.S.C. 798.

(5) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 130, and 32 CFR part 250.

(6) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(7) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(8) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

D. Exemption (b)(4): Those containing trade secrets or commercial or financial information that the OIG receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also 32 CFR part 286h, "Release of Acquisition-Related Information".

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interest in such data in accordance with title 10, U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4 (see section C.(5) of this appendix).

(7) Computer software meeting the conditions of § 295.3(c), which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

E. Exemption (b)(5). Except as provided in subsections (2) through (5), below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), DoD Components or OIG components. Also exempted are records pertaining to attorney-client privilege and the attorney work-product privilege.

(1) Examples include:

(a) The nonfactual portions of staff papers, to include after action-reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(b) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(c) Those non-factual portions or evaluations by DoD or OIG Components personnel of contractors and their products.

(d) Information of a speculative, tentative, or evaluative nature of such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(e) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(f) Records that are exchanged among agency personnel within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(g) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(h) Computer software meeting the standards of § 295.3(c), which is deliberative in nature, the disclosure of which would inhibit or chill the decision-making process. In this situation, the use of software must be closely examined to ensure its deliberative nature.

(i) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process.

(2) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

F. Exemption (b)(6). Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result

in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(a) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(b) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, the release of lists of DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(a) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(b) Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(3) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(4) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (32 CFR part 286a).

(5) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, legal counsel should first be consulted.

G. Exemption (b)(7). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(a) Could reasonably be expected to interfere with enforcement proceedings.

(b) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, the OIG shall neither confirm nor deny the existence or nonexistence of the record being requested.

(ii) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(iii) Refusal to confirm or deny should not be used when (1) the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or (2) the person whose personal privacy is in jeopardy is deceased, and the OIG is aware of that fact.

(d) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(e) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(f) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(g) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Examples include:

(a) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(b) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(c) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (32 CFR part 286a).

(5) Exclusions. Excluded from the above exemptions are the following two situations as applicable to the Department of Defense and the OIG:

(a) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the OIG may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requesters will state that no records were found.

(b) Whenever informant records maintained by a criminal law enforcement organization within the OIG under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the OIG may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are subject to exemption (b)(7), the response to the requester will state that no records were found.

H. Exemption (b)(8). Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

I. Exemption (b)(9): Those containing geological and geophysical information and data (including maps) concerning wells.

Dated August 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-18776 Filed 8-8-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91-074]

Special Local Regulation: New York National Championship Race, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for the New York National Championship Race. The event, sponsored by Offshore Professional Tour, Inc., is scheduled to take place on Sunday, October 6th, 1991. Closure of the lower Hudson River from Battery Park to the George Washington Bridge is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

DATES: Comments must be received on or before September 15th, 1991.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, NY 10004-5096. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal Office hours are between 8 am and 4:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C.W. Jennings, Waterways Management Officer, Coast Guard Group New York (212) 668-7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 91-074) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG C.W. Jennings, project officer, Coast Guard Group New York, and LT J.B. Gately, project attorney, First Coast Guard Director Legal Division.

Discussion of Proposed Regulations

On March 1, 1991 the sponsor, Offshore Professional Tour, submitted a request to hold an offshore powerboat race on the Hudson River, alongside Manhattan. This event will include up to 40 powerboats competing on an oval course for 150 miles at speeds approaching 100 m.p.h. Due to the type of race, the speed at which the participants will be moving, and the type of watercraft involved it is believed that the river will have to be closed to all other traffic for the duration of the event. This closure will include all waters of the Hudson River south of the George Washington Bridge and north of Battery Park. This action is needed to protect the maritime community from the hazards associated with this race. Environmental impact of this event is expected to be minimal. Risks associated with this event are expected to pose no threat to environmentally sensitive areas.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is due to the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the event is taking place on a Sunday afternoon which is normally a very light volume day for commercial marine traffic. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35 T1074 is added to read as follows:

§ 100.35-T1074 New York National Championship Race.

(a) Regulated area. The regulated area includes all waters of the Lower Hudson River south of the George Washington Bridge and north of a line drawn between Battery Park, Manhattan and the southernmost slip of the Central Railroad, Jersey City Station in Liberty State Park, described by the following points:

Commencing
SW Latitude 40 41.8 N
Longitude 074 02.3 W then East to
SE Latitude 40 41.8 N
Longitude 074 01.0 W then Northeast to
NE Latitude 40 49.5 N
Longitude 073 57.4 W then Northwest to
NW Latitude 40 51.0 N
Longitude 074 00.0 W then Southwest to the origin.

(b) Special local regulations. (1) Commander, Coast Guard Group New York reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event or as authorized by the sponsor or Coast Guard patrol commander. The Coast Guard patrol commander will attempt to minimize any delays for commercial vessels transiting the area and will be monitoring channel 16 VHF.

(3) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (b)(5) of this section.

(4) Unless otherwise directed by the Coast Guard patrol commander, transiting vessels shall: Proceed at no wake speeds; remain clear of the race course area as marked by the sponsor provided buoys; not interfere with races or make stops; and keep to the western edge of the Hudson River.

(5) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessel so designated by the regatta sponsor or Coast Guard patrol personnel.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast

Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) The sponsor shall be responsible for proper marking of the course within the regulated area and adequately marking the boundaries of the spectator area. All turn and spectator area buoys shall be established in a position agreeable to the Coast Guard Patrol Commander not later than one hour prior to the start of the event. All buoys marking the course and spectator area must be removed not later than one hour after completion of the event.

(8) The sponsor shall be required to provide no less than (6) six vessels for spectator control and to secure the race area. If insufficient sponsor provided vessels are controlling the event, the Coast Guard patrol commander may terminate the event. These vessels shall be on scene no later than one hour prior to the start of the event.

(9) In the event of an emergency or as directed by the Coast Guard patrol commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the patrol commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate the event.

(c) Effective period. These regulations, if adopted, will be effective from 11 a.m. through 4 p.m. on October 6th, 1991. In case of inclement weather, this regulation, if adopted, will be effective from 11 a.m. through 4 p.m. on October 7th 1991.

Dated: August 5, 1991.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91-18846 Filed 8-8-91; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1992 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1992 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $75.00.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Import Quota Manager, Import Policy and Trade Analysis Division, room 5531–South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 447–2916.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Import Quota Manager, Import Licensing Group, Import Policy and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 1992 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1991 has been determined to be $284,791. Of this amount, $163,541 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1991 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $132,851; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $30,690); $46,000 represents the cost of the computer on-line entry system used to monitor the use of licenses during 1991; and $75,250 represents other miscellaneous costs, including travel, postage, and an in-house computer system and contractor. The average number of licenses issued per year for the three years immediately preceding 1992 has been determined to be 3,786. Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1991 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $75.00 per license.

Issued at Washington, DC the 6th day of August, 1991.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 91–18996 Filed 8–8–91; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

New World Project, Gold/Copper/Silver Mine, Gallatin National Forest, Park County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Gallatin National Forest (GNF), in conjunction with Montana's Department of State Lands (DSL), will prepare an environmental impact statement (EIS) for a proposal to permit the development of the New World Project. The New World Project, a gold, copper, and silver mine proposed by Crown Butte Mines, Inc. and Noranda Minerals Corporation, is located about 3 miles north of Cooke City, Montana. The proposed plan of operations was submitted on November 15, 1990 pursuant to the Forest Service locatable mineral regulations 36 CFR part 228, chapter II, subpart A, and to the State of Montana Metal Mine Reclamation Act title 82, chapter 4, part 3, MCA.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to David P. Garber, Forest Supervisor, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59771.

FOR FURTHER INFORMATION CONTACT: Sherm Sollid, Geologist, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59771, telephone 406–587–6709.

SUPPLEMENTARY INFORMATION: The New World Project, was submitted by Crown Butte Mines and Noranda Minerals on November 15, 1990 in their Proposed Plan of Operations, would consist of a 1000 ton-per-day mine and mill complex. The ore would be mined from an underground mine and from two open-pits. Ore would be crushed and conveyed to a mill in the Fisher Creek drainage. Ore would be ground at the mill and the gold, cooper, and silver

concentrated by conventional froth flotation and tailings leach methods. Tailings from the mill process would be conveyed through a pipeline to the tailings disposal impoundment located less than ½ mile upstream from the mill in Fisher Creek. Concentrates from the mill would be shipped by truck to Cody, Wyoming and then by train to a smelter. The project would require construction of about 68 miles of 69kV transmission powerline from Cody, Wyoming to Cooke City, Montana. The mine life is estimated to be 12–15 years with a workforce of approximately 150 people. The companies have developed a reclamation plan to rehabilitate all disburbed areas following construction, opeation, and mine closure.

The Gallatin Forest Supervisor and the Shoshone Forest Supervisor are the responsible officials for the Forest Service action related to this project. In addition to the Montana Department of State Lands, cooperating agencies that have been identified at this time are the Bureau of Land Management, the Army Corps of Engineers, the Montana Department of Health and Environmental Sciences, and the Wyoming Public Service Commission.

Governmental agencies and the public who may be interested in or affected by the proposal are invited to participate in the scoping process.

The scoping process is designed to obtain input to identify potential issues related to the proposed project. The Forest Service, in conjunction with the Montana Department of State Lands, will hold a public scoping meeting on Wednesday, August 14, 1991 at the Range Riders Lodge in Silver Gate, Montana at 10 a.m. Additional scoping meetings are planned for Livingston, Montana and Cody, Wyoming at a later date. The dates of these scoping meetings will be published in appropriate local newspapers.

The EIS will consider a range of alternatives based on the issues, concerns and opportunities associated with the project. The estimated date for issuance of the draft environmental impact statement is June, 1992. A public meeting will be held in conjunction with the issuance of the draft environmental impact statement. The final impact statement is expected to be available in October, 1992. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: August 1, 1991.

David P. Garber,

Forest Supervisor, Gallatin National Forest.

[FR Doc. 91–18917 Filed 8–8–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–91]

Foreign-Trade Zone 125—South Bend, IN; Application for Subzone; Coachmen Company Recreational Vehicle Plant; Extension of Public Comment

The comment period for the above case, requesting special-purpose subzone status for a propose compant recreational vehicle (RV) assembly operation at the plant of Coachmen Recreational Vehicle Company located in Middlebury, Indiana (56 FR 28370, 6/20/91), is extended to August 30, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–18988 Filed 8–8–91; 8:45 am]

BILLING CODE 3510–DS–M

(Docket 43–91)

Foreign-Trade Zone 92—Harrison Co. MS; Application for Expansion and Application for Subzone, Avondale Shipyard

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting authority to expand its zone in Harrison County, Mississippi, within the Gulfport Customs port of entry, and requesting special-purpose subzone status at the shipyard of Avondale Enterprises, Inc., located in Harrison County. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 16, 1991.

FTZ 92 was approved on November 4, 1983 (Board Order 232, 48 FR 52107, 11/16/83), and currently covers 4 sites in Harrison County, Mississippi: Site 1—5 acres within the Port of Gulfport Complex; Site 2—99 acres at the Gulfport/Biloxi Regional Airport; Site 3—97 acres within the Bernard Bayou Industrial Park; and Site 4—27 acres within the Long Beach Industrial Park.

The grantee now requests authority to expand all four of its general-purpose zone sites to include the larger projects of which they are a part. Site 1 would cover the entire 167-acre Port of Gulfport complex located on Highway 90 and 30th Avenue in Gulfport. Site 2 would involve a 717-acre industrial area within the regional airport at 14035 Airport Road, Gulfport. Site 3 would cover the Bernard Bayou Industrial Park (2,501 acres) 1 mile north of Gulfport. Site 4 would involve the entire Long Beach Industrial Park (484 acres) 5 miles west of Gulfport between Espy Avenue and Beat Line Road. No manufacturing

authority is being sought for the general-purpose zone sites. Such requests would be made to the Board on a case-by-case basis.

The proposed subzone for the Avondale shipyard (122 acres) is located at 13301 Industrial Seaway Road at the Bernard Bayou Industrial Park. The facility is used for the construction, repair and conversion of commercial and military vessels for domestic and international customers. Foreign components used by the company include clutches, compressors, depth sounders, diesel engines, electric motors, gate valves, generators, hatch covers and hydraulic lifts. While there is no indicated use of foreign steel mill products, the applicant is aware that Board decisions on shipyard cases have included a standard restriction requiring the payment of full duties on such products.

Zone procedures will help Avondale reduce production costs on its current orders and compete internationally for new contracts. Most of the foreign components are subject to Customs duties, which range from 2 to 8 percent, while the finished products, as oceangoing vessels, are duty free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; David L. Willette, District Director, U.S. Customs Service, South Central Region, 150 North Royal, Mobile, Alabama 36602; and, Colonel Michael F. Thuss, District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, Alabama 36628–0001.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 20, 1991.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, One Government Plaza Building, Gulfport, Mississippi 39502.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: August 1, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–18990 Filed 8–8–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 19–91]

Foreign-Trade Subzone 78A, Nissan Auto/Truck Plant Smyrna, TN, Application for Expansion; Extension of Public Comment Period

The comment period for the above case, requesting authority to expand the subzone and the scope of manufacturing authority for Foreign-Trade Subzone 78A of Nissan Motor Manufacturing Corporation U.S.A. (56 FR 16067, 4/19/91), is further extended to September 25, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–18991 Filed 8–8–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 524]

Resolution and Order Approving the Application of the Calhoun-Victoria Foreign-Trade Zone, Inc. for a Special-Purpose Subzone at the Alcoa Alumina and Aluminum Fluoride Manufacturing Plant in Calhoun County, Texas

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Calhoun-Victoria Foreign-Trade Zone, Inc., grantee of FTZ 155, filed with the Foreign-Trade Zones Board (the Board) on February 9, 1990, requesting special-purpose subzone status at the alumina and aluminum fluoride manufacturing plant of Aluminum Company of America, Inc., in Calhoun County, Texas, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Calhoun County, Texas

Whereas, By an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Calhoun-Victoria Foreign-Trade Zones, Inc., Grantee of FTZ 155, has made application (filed February 9, 1990, FTZ Docket 4–90, 55 FR 6027, 2/21/90) in due and proper form to the Board for authority to establish a special-purpose subzone at the alumina and aluminum fluoride manufacturing plant of the Aluminum Company of America, Inc., (Alcoa) in Calhoun County, Texas;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, In accordance with the application filed February 9, 1990, the Board hereby authorizes the establishment of a subzone at the Alcoa plant in Calhoun County, Texas, designated on the records of the Board as Foreign-Trade Subzone 155C, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express condition and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Office or his delegate at Washington, DC, this 5th day of August, 1991, pursuasnt to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 91-18992 Filed 8-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 25-91]

Foreign-Trade Zone 125—South Bend, IN; Request for Manufacturing; Vehicle Concepts Recreational Vehicle Plant; Extension of Comment Period

The comment period for the above case, requesting authority to manufacture recreational vehicles and ambulances under zone procedures within FTZ 125, South Bend, Indiana, for Vehicle Concepts (56 FR 22395, 5/15/91), is further extended to August 30, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-18989 Filed 8-8-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-357-804]

Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1174 or (202) 377-3695, respectively.

Final Determination

Background

Since the publication of our affirmative preliminary determination on March 29, 1991 (56 FR 13118), the following events have occurred.

On April 2, 1991, the Department sent a deficiency letter to Electrometalurgica Andina, S.A.I.C. (Andina) based on its response to Section D of the questionnaire. On April 3, 1991, Andina requested, and was granted, an extension to respond to the Department's April 2, 1991, deficiency letter. Petitioners submitted issues for the Department's verification in Argentina on April 5, 1991. On April 16, 1991, Andina submitted its response to the Department's April 2, 1991, deficiency letter, and its Section D response. On April 18, 1991, Andina submitted corrections to its Sections A, B, and C responses.

Pursuant to an April 5, 1991, request by Andina, on April 30, 1991, we postponed the final determination until not later than August 12, 1991 (56 FR 19835 (April 30, 1991)).

We conducted verification of Andina's questionnaire responses between April 22 and April 26, 1991, in Argentina.

On May 23, 1991, petitioners, Silarsa, and Andina submitted case briefs. On May 30, 1991, petitioners and Andina submitted rebuttal briefs. A public hearing was held on May 31, 1991.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. Although the HTS numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1990, through August 31, 1990.

Such or Similar Comparisons

We established one such or similar category of merchandise, consisting of silicon metal, in accordance with section 771(16) of the Act. Comparisons were made on the basis of the following grade classifications: (1) Chemical grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.00 through 0.65 percent; (2) primary-aluminum grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.66 through 1.00 percent; (3) secondary-aluminum grade, having a silicon content of 98.00 through 98.49 percent; and (4) other, with a silicon content of 96.00 through 97.99 percent.

Standing

Our position on standing remains unchanged from that in our preliminary determination. See Preliminary Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina, 56 FR 13116 (March 29, 1991) (Silicon Metal).

Critical Circumstances

Our position on critical circumstances remains unchanged from that in our preliminary determination. See Silicon Metal.

Exclusion Request

On November 21, 1990, Silarsa requested that it be excluded from any antidumping duty order issued in this

investigation, pursuant to 19 CFR 353.14. Silarsa requested exclusion from any antidumping duty order issued in this investigation because Silarsa believes that it is in a unique position. Silarsa considers its position to be unique because it is a joint venture operation that began investing in plant and equipment four years ago, without the benefit of knowledge of any possible antidumping duty order being issued. Silarsa further states that, although it was already on-line when the petition was filed, it had not yet begun production and therefore could not participate in the investigation as a voluntary respondent. In a February 21, 1991, submission, Silarsa stated that if it was not granted an exclusion, a zero deposit rate would be a possible option. On March 19, 1991, petitioners opposed Silarsa's request for exclusion from any antidumping duty order issued in this investigation and the assignment of a zero deposit rate for Silarsa.

In the preliminary determination, we denied Silarsa's exclusion request because Silarsa did not possess a "track record" with which to demonstrate that, in accordance with 19 CFR 353.14, it is not dumping. We did not assign Silarsa a zero deposit rate in the preliminary determination because we determined that Silarsa's position, once it begins to export to the United States, will be similar to that of any other new shipper of the subject merchandise. While the specific facts underlying Silarsa's request may appear somewhat unusual in that Silarsa was already on-line when the petition in this case was filed but had not yet begun production, we are unable to grant Silarsa's exclusion request. In accordance with 19 CFR 353.14, exclusion of a particular exporter is possible only if that exporter can demonstrate that it is not dumping. That is, if a company is to be excluded from an order, the company must certify not only that it will not dump in the future, but it must also demonstrate that its pricing practices during the POI did not result in sales at less than fair value. Silarsa cannot satisfy this latter requirement. The Department's antidumping determinations are not limited only to those exporters who are respondents in an investigation; rather, our determinations cover all exports of the specified merchandise from the country subject to an investigation, regardless of whether particular exporters had sales during the POI. Accordingly, we determine that Silarsa will not be excluded from the determination.

Furthermore, we cannot assign Silarsa a zero deposit rate because Silarsa's position, once it begins exporting to the United States, will be similar to that of any other new shipper of the subject merchandise. Accordingly, Silarsa is subject to the "All Others" rate, as would be any new shipper of the subject merchandise from Argentina. This approach is consistent with the Department's long-standing practice. Accordingly, absent actual sales by Silarsa, assigning it the "All Others" rate based on the data of the other Argentine company that has been found to sell at less than fair value is the only action supported by the facts developed in this investigation.

If an antidumping duty order is issued in this investigation, Silarsa will have an opportunity to request an administrative review under section 751 of the Act. If its entries are found to be priced at not less than foreign market value, no duties will be assessed and any deposits of estimated antidumping duties it was required to make will be refunded with interest.

Fair Value Comparisons

To determine whether sales of silicon metal from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, labor at port, customs fees, and Argentine export duties, in accordance with section 772(d)(2) of the Act. We increased purchase price for taxes rebated and taxes uncollected by reason of exportation, in accordance with section 772(d)(1)(C) of the Act. Because of inconsistencies found in the response, we used verified duty drawback rates when adjusting for taxes rebated and taxes uncollected by reason of exportation.

Foreign Market Value

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (*i.e.*, all silicon metal) to the aggregate volume of third country sales, in accordance with section 773(a)(1) of the Act. For Andina, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

On February 5, 1991, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Because we had reasonable grounds to believe or suspect that Andina sold in the home market at less than the COP, we initiated a cost investigation in accordance with section 773(b) of the Act.

We also determined Argentina's economy to be hyperinflationary. Therefore, in order to eliminate the distortive effect of hyperinflation and in accordance with the Department's longstanding practice, we calculated separate COPs and CVs for each month of the POI. See, *e.g.*, Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil, 53 FR 34566 (September 7, 1988) (Disc Wheels).

In order to determine whether home market sales were above the COP, we calculated monthly COPs on the basis of Andina's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by Andina except in the following instances where the costs were not appropriately quantified or valued: We adjusted Andina's crushing costs based on the percentage of crushed raw material used in silicon metal production; we increased general and administrative expenses (G&A) to include "other expenses" as reflected on the financial statements; we reallocated factory administrative charges based on information on the record; we recalculated electricity costs based on information on the record; we calculated an offset for scrap sales; and we corrected certain clerical errors in Andina's submission.

We compared individual home market prices with the monthly COPs. We found that during the POI there were sufficient sales overall above the COP to use as FMV. However, for the month of July 1990, all sales in the home market were made at prices below the COP. Therefore, for this month, we based FMV on CV. See Final Determination of

Sales at Less Than Fair Value: Tubeless Steel Disc Wheels from Brazil, 54 FR 8948 (March 20, 1987).

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CV includes materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

(1) Andina's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) The statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as Andina's profit was less that eight percent of the sum of general expenses and the cost of manufacture (COM).

We used Andina's submitted monthly costs except for the following instances where the costs were not appropriately quantified or valued: we adjusted Andina's crushing costs based on the percentage of crushed raw material used in silicon metal production; we increased G&A to include "other expenses" as reflected on the financial statements; we reallocated factory administrative charges based on information on the record; we recalculated electricity costs based on information on the record; we corrected certain clerical errors in Andina's submission; and we added imputed credit and packing costs.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). In addition, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of shipment. Because the CV is calculated as of the date of exportation (shipment), we made this adjustment to eliminate the artificial distortion of value caused by the rapid depreciation of Argentina's currency. See Disc Wheels.

For price-to-price comparisons, we calculated FMV based on the unpacked, ex-factory prices denominated in U.S. dollars to unrelated customers in Argentina. We added U.S. packing costs to the home market price in accordance with section 773(a)(1) of the Act. We added the separate profit Andina realizes from the sale of packing to the home market price.

Because all price-to-price comparisons involved purchase price sales, we made a circumstance of sale adjustment for differences in credit expenses, in accordance with 19 CFR 353.56. We recalculated credit using interest rates available to Andina during the POI for borrowings in foreign currencies.

We made an upward adjustment to the tax-exclusive home market prices for the taxes we computed for the USP.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of those rates, we used the daily official exchange rates for Argentina published by the National Bank of Argentina.

Verification

As provided in section 776(b) of the Act, we verified all information provided by the respondent by using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Petitioners argue that the Department should not make an upward adjustment to U.S. price for the turnover tax and the lote hogar tax which are assessed on gross home market revenues but not on export revenues. Contrary to Andina's claim in its January 11, 1991, submission that these taxes are indirect taxes which are included in the price of silicon metal sold in the home market, petitioners maintain that these taxes are actually taxes on the gross revenue. Petitioners state that neither the turnover tax nor the lote hogar tax are indirect taxes, and that Andina has not shown that it passes these taxes through to customers by including these taxes in, or adding them to, the home market selling price.

Petitioners also contend that, even if it were appropriate to make an addition to U.S. price for the turnover tax and the lote hogar tax, the amount of the adjustment made in the preliminary determination overstated the actual incidence of these taxes on home market sales. Petitioners claim that these taxes are imposed only on home market sales within the province of San Juan, and that such sales constitute only a small percentage of Andina's total home market sales. Therefore, petitioners argue that the amount that should be added to the U.S. price for the turnover tax and the lote hogar tax should not exceed the tax rate multiplied by the percentage of Andina's sales in San Juan.

Andina claims that the turnover tax and the lote hogar tax are indirect taxes on the sales value of the subject merchandise, and that Andina must pay these taxes on the price of all of its home market sales. Andina states that the taxes are not paid separately on each sales transaction; rather, at the end of the month total home market sales are taxed. Therefore, Andina asserts that these taxes are not direct taxes like an income tax, but instead are taxes on the gross revenue of home market sales.

Andina also argues that it pays the turnover tax and the lote hogar tax on all its home market sales, with different tax rates for the different provinces. Andina further claims that it has understated the amount of the taxes to be added to the U.S. sales price, since the reported percentage is only for sales in San Juan province, rather than an average of the tax rates for the different provinces.

DOC Position: We agree in part with petitioners. In our preliminary determination, we added the combined turnover tax and the lote hogar tax, reported by Andina as indirect taxes, to U.S. price and made a circumstance of sale (COS) adjustment to home market prices for the difference in the tax amounts in the two markets. However, at verification, we observed that Andina pays these taxes on monthly revenue inclusive of home market sales revenue, interest income, bond revenue, and other miscellaneous revenues, but exclusive of export revenues.

Section 771(d)(1)(C) of the Act provides that the Department make a COS adjustment for any indirect taxes imposed directly upon the "merchandise or components thereof" that have not been collected by reason of exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of the merchandise when sold in the home market. See, *e.g.*, Frozen Concentrated Orange Juice From Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review, 55 FR 47502 (November 14, 1990) (FCOJ). There is no evidence on the record that the turnover tax and the lote hogar tax are paid by the purchaser, nor is there evidence that Andina takes these taxes into account in setting its home market prices. Since we have determined that the taxes in question should be viewed as taxes on gross revenue exclusive of export revenue, not taxes imposed directly upon the merchandise or components thereof, we have not made any adjustment for these taxes in the final determination.

Comment 2: Petitioners argue that any adjustments the Department may make for the rebate of indirect taxes under

Argentina's reembolso program should be only to the extent that the indirect taxes are paid in the home market on silicon metal or on inputs that are physically incorporated into silicon metal. In support of this argument they cite to Carbon Steel Wire Rod from Argentina, 49 FR 38170 (1984) (Argentina Wire Rod), Barbed and Barbless Wire from Argentina, 50 FR 38563 (1985) (Argentina Barbed Wire), and Carbon Steel Pipe and Tube from Thailand, 55 FR 42596 (1990) (Thailand Pipe and Tube).

Petitioners also argue that no adjustment should be made for the following indirect taxes: The turnover tax, the loto hogar tax, import duties, the statistics tax, and the merchant marine fund tax, because these taxes are already the subject of separately claimed adjustments. Petitioners maintain that including them for purposes of determining the amount of any adjustment under the reembolso rebate program would result in their being double counted.

Andina argues that because the base upon which the reembolso rate is applied is the FOB export price less the cost of the imported electrodes, the effective rate which the Department added to the U.S. price was less than the stated reembolso rate. Andina maintains that under the Argentine tax system, it qualifies for a rebate of all the taxes listed in its January 11, 1991, submission.

Andina claims that an adjustment for the turnover tax and the loge hogar under the reembolso program would not result in their being double counted if they are also the subject of a separate adjustment because these taxes have two effects at two different stages. Andina claims that it not only pays these taxes on its sales income, but also on the products it purchases from its suppliers because these taxes are passed onto Andina through the prices charged by Andina's suppliers.

However, Andina does agree with petitioners that the import duties, the statistics tax, and merchant marine fund tax would be double counted if the Department were to consider them for purposes of the reembolso rebate adjustment.

DOC Position: We disagree with petitioners' argument that the adjustment to U.S. price for the rebate of indirect taxes must be limited to the rebate of taxes paid on inputs that are physically incorporated into the subject merchandise.

Prior to the Trade Act of 1974, sections 203 and 204 of the Antidumping Act of 1921, 19 U.S.C. 162 and 163, provided for an upward adjustment to U.S. price for taxes rebated or not collected by reason of exportation "in respect to the manufacture, production, or sale of the merchandise." H.R. Rep. No. 93–571, 93rd Cong., 1st Sess. 69–70 (1973). This allowed for an adjustment to U.S. price for a broad range of taxes. In the legislative history to the Trade Act of 1974, Congress expressed concern that the adding back of such taxes under the Antidumping Act had "the effect of reducing or eliminating any dumping margins that may exist." *Id.* at 70.

Accordingly, section 321(b) of the Trade Act of 1974 amended section 203 and 204 of the Antidumping Act to provide for an upward adjustment to U.S. price for "any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof," and which have been rebated or not collected by reason of exportation of the merchandise to the United States. See 19 U.S.C. 1677a(d)(1)(C). Thus, with this amendment, Congress limited the adjustment to U.S. price for the rebate of taxes to those instances in which "the direct relationship of the tax to the product being exported, or components thereof, could be demonstrated." H.R. No. 93–571, at 69. Accord S. Rep. No. 93–1298, 93rd Cong., 2nd Sess. 172 (1974). This is the same standard used in a CVD investigation in determining whether a foreign company has received a countervailable benefit for the rebate of indirect taxes. See H.R. Rep. No. 93–571 at 69 (amendment would "conform the standard in the Antidumping Act to the standard under the CVD law, thereby harmonizing tax treatment under the two statutes); S. Rep. No. 93–1298, at 172 (the standard in the amendment "parallels that standard employed by the Treasury Department under the countervailing duty law in determining whether tax rebated and remissions constitute bounties or grants").

It might be argued that by including the "directly related" standard, Congress intended that a separate subsidy investigation be undertaken whenever an adjustment involving the rebate of indirect taxes is to be made pursuant to section 772(d)(1)(C). However, other than indicating that the adjustment should be limited where the existence of an excessive rebate is established, neither the statutory language nor the legislative history of this provision contains any express indication that Congress intended that the administering authority conduct a separate CVD investigation within an AD investigation in order to limit U.S. price adjustments. Moreover, there is no indication that the Treasury Department, which was involved in the drafting of the 1974 Trade Act and which was responsible for administering the AD law until 1980, ever interpreted the amended U.S. price section to require that a subsidy inquiry for information on physical incorporation be conducted in the context of a stand-alone AD investigation. Therefore, when there is a companion CVD proceeding on the merchandise subject to an AD proceeding, the Department limits adjustments to U.S. price for the rebate of indirect taxes to taxes paid on inputs that are physically incorporated into the subject merchandise. The Department, however, does not limit such adjustments to U.S. price when there is no companion CVD proceeding on the subject merchandise.

Furthermore, the adjustment required by section 772(d)(1)(D) of the Act indicates that the adjustment for the rebate of indirect taxes, pursuant to section 772(d)(1)(C), should be limited to taxes paid on inputs physically incorporated into the subject merchandise only when there is a companion CVD proceeding. Under section 321(b) of the 1974 Trade Act, Congress also amended section 203 of the Antidumping Act to provide that purchase price shall be increased by "the amount of any countervailing duty imposed on the merchandise under part 1 of this subtitle or section 1303 of this title to offset an export subsidy." See 19 USC 1677a(d)(1)(D). Although this provision of the Act is designed to prevent what would be a double assessment on a respondent when there is a companion CVD proceeding, see H.R. Rep. No. 93–571, at 70; S. Rep. No. 93–1298, at 172, it is not meant to provide a benefit to the respondent. A benefit would occur, however, if, as under the pre-1974 statute, any countervailable rebate of taxes were included in the upward adjustment to U.S. price.

Accordingly, in order to properly give effect to section 772(d)(1)(D) when there is a companion CVD case, adjustments to U.S. price under section 772(d)(1)(C) must be limited to the amount of the rebate of indirect taxes on inputs that are physically incorporated into the exported merchandise. In this regard, the Department notes that U.S. price adjustments, pursuant to section 772(d)(1)(C), should not be limited when there is an "allied" CVD case, *i.e.*, one which deals with a principal upstream input such as in Argentine Barbed Wire, and does not intend in the future to limit U.S. price adjustments in such cases to the amount of the rebate of indirect taxes paid on inputs that are physically incorporated into the subject merchandise.

The complex nature of the investigation that must be undertaken to resolve the issue of "physical incorporation" also suggests that Congress did not intend that a separate CVD investigation be conducted in the context of a stand-alone AD investigation. For example, certain countries, such as Argentina, employ a "cascade" tax system in which turnover taxes are assessed on every product within the production chain of all goods produced in the country, with no credit given (as with value-added taxes) for taxes already paid. The indirect taxes imposed upon the inputs to the final product (and upon the inputs to the inputs, etc.) are, in effect, multiplied to the extent that the effective indirect tax burden borne by the final product usually is several times the nominal rate of any turnover tax. When conducting a normal CVD investigation to determine whether the rebate of indirect taxes under a "cascade" tax system is excessive, the Department must deal extensively with the foreign government in question to explore the nature of any government studies (typically sector-specific "input-output" econometric studies) which document specific and cumulative tax burdens for all inputs and products. Such a proceeding ordinarily is very complex and time-consuming. In contrast, AD investigations in market economy countries rarely involve government-to-government contact because all of the information relevant to antidumping determinations (concerning prices and costs) is possessed by the private companies involved.

In addition, the courts have explicitly stated that there are good reasons why the Department should refrain from making a subsidy determination in the context of an AD investigation. For example, as the court explained in *Huffy Corp.* v. *United States*, 632 F. Supp. 50 (CIT 1986): "The determination of whether a countervailable subsidy exists is a complex one and Congress has provided a separate set of guidelines for the inquiry. In a dumping investigation the ITA is not seeking the same information or asking the same questions it would in a countervailing duty investigation." *Id.* at 55. *Accord Far East Machinery Co., Ltd.* v. *United States*, 699 F. Supp. 309 (CIT 1988), *Sawhill Tubular Div. Cyclops Corp.* v. *United States*, 651 F. Supp. 1421 (CIT 1986).

Therefore, even without taking into account the turnover tax, and the lote hogar tax, which we have determined are not indirect taxes, (See DOC Position to Comment 1), and the import duties, the statistics tax, and the merchant marine tax, which we have already adjusted for as duty drawbacks, we are satisfied that the reembolso program qualifies as a rebate of indirect taxes within the meaning of section 772(d)(1)(C) of the Act, and an adjustment for the amount of the reembolso rebate is proper. We have verified that Andina receives a rebate under the reembolso program for taxes imposed directly upon the product or its components. Accordingly, we made an upward adjustment to U.S. price for the amount of this rebate.

Comment 3: Petitioners claim that the amount of duty drawback recalculated at verification overstated the amount of merchant marine tax per metric ton of silicon metal that should be included in the COS adjustment for duty drawback.

Petitioners argue that the amount of merchant marine tax calculated by Andina should be multiplied by the amount of electrodes used per metric ton of silicon metal in order to calculate the amount of merchant marine tax per metric ton of silicon metal.

Andina agrees with petitioners.

DOC Position: We agree with petitioners. At verification, we observed that the merchant marine tax is applied per metric ton (MT) of silicon metal. We also noted that Andina's duty drawback calculation had not been multiplied by the electrode usage per MT of silicon metal. Andina's duty drawback calculation for the merchant marine tax should have been multiplied by the verified electrode usage per MT of silicon metal in order to calculate the proper amount of electrode freight cost per MT of silicon metal to be included in the COS adjustment for duty drawback. We used this corrected merchant marine tax in our calculation of duty drawback.

Comment 4: Petitioners argue that in its April 18, 1991, submission, Andina provided information concerning the amount of an export tax paid on its August U.S. sales, and that the Department should make a downward adjustment to U.S. price for the export tax assessed on these sales. Petitioners argue that the Department should use the amount of tax paid, as reported by Andina, as best information available (BIA) for the amount of the adjustment.

Andina agrees with petitioners. Andina concedes that the August charges are not actually taxes, but are warehousing expenses Andina incurred on the August shipments which a customs official recorded in the column in a shipping permit where export duties used to appear. Therefore, Andina argues that although these charges were not taxes, they have the same effect as if they had been reported as a tax.

DOC Position: We agree with petitioners. In its April 18, 1991, submission, Andina reported this amount as an export tax. Later, in its May 30, 1991, rebuttal brief, Andina referred to this amount as a type of warehousing charge. Although Andina could not demonstrate what this charge was for, at verification we observed that Andina did in fact pay this charge on its August export sales. Accordingly, as BIA we used the amount reported and verified for this charge and made a downward adjustment to U.S. price.

Comment 5: Petitioners argue that because Andina pays a tax on its inland freight, the Department should include this tax in the amount deducted from U.S. price for foreign inland freight.

Andina argues that it has reported the full amount of the freight invoice in its sales listing. Andina claims that the difference between the freight invoice and what Andina paid to the freight company is a withholding of income tax on behalf of the freight company. Andina maintains that it retains a percentage of the invoice amount equal to the tax amount and remits this to the federal government. Therefore, Andina argues that it does not pay a tax on its inland freight and that there should be no adjustment for this tax because Andina has already reported and paid the full price on the freight invoice as Andina's freight cost.

DOC Position: We agree with Andina. At verification, we observed that Andina had reported the full amount of the freight invoice in its sales listing. Andina pays a percentage of the freight invoice amount to the government. Therefore, the withholding tax is included in the amount of freight reported by Andina.

Comment 6: Petitioners argue that the Department should use home market price in australes rather than U.S. dollars as the basis for FMV. Petitioners maintain that Andina sets its prices and incurs its expenses in australes, not U.S. dollars. Petitioners argue that since Andina provided the australes price on the date of payment and the exchange rates used in calculating the australes prices in its March 20, 1991, submission, the use of dollar prices as BIA is no longer necessary and the Department should use these reported australes prices when calculating FMV.

Petitioners also maintain that for those home market sales for which Andina has not yet received payment and does not have final australes prices, the Department should exclude such sales.

Andina argues that its sales are priced in U.S. dollars and that the austral amounts that it assigns to its sales are for accounting purposes only. Andina further argues that, because of hyperinflation, some of the australes amounts during the POI are meaningless, and that using the australes amounts for its home market sales would be much less accurate than using the reported U.S. dollar amounts.

Andina maintains that all of its invoices for home market sales contain dollar unit prices and that these dollar prices are the basis for all of Andina's calculations. Andina also states that the Argentine Government has "dollarized" the entire Argentine economy. This system is officially recognized by the Argentine Government in the Convertibility Law, whereby the Subsecretary of Foreign Trade allows the commercial practice of listing both austral and dollar prices on all invoices.

DOC Position: We agree with Andina. All of Andina's calculations and invoices contain the dollar value of its home market sales. At verification we saw evidence that the Argentine economy is indeed dollarized, and that sales and purchases are negotiated in U.S. dollars in the normal course of trade. The Department requires respondents to provide all prices and expenses in the currency in which they were incurred to facilitate accurate computations. See Preliminary Determination of Sales at Less Than Fair Value; Martial Arts Uniforms from Taiwan, 54 FR 18562 (May 1, 1989). In this case, the respondent has given ample proof that sales and purchases are valued in U.S. dollars in the normal course of trade in Argentina, and there is nothing in the Act or regulations precluding the use of dollar denominated home market prices. Therefore, we determine that using the reported U.S. dollar values for Andina's home market sales is appropriate in this investigation.

Since we are basing FMV on the reported U.S. dollar values, we do not need the final austral prices for the home market sales on which Andina has not yet received payment. These sales do not need to be excluded from our FMV calculation because Andina has reported the prices of these home market sales in U.S. dollars in its original sales listing.

Comment 7: Petitioners argue that the Department should follow its established practice and calculate Andina's home market credit expense based on the australes price on the date of sale. Andina argues that this proposal is not reasonable from an economic or financial point of view because Andina gives no significance to the sale price in australes at the date of sale.

DOC Position: We agree with petitioners that the home market credit expense should be based on the price on the date of sale. See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 1794 (January 17, 1991). The Department makes an adjustment for credit expenses in order to take into account the opportunity costs incurred by a seller when it does not receive payment immediately. Therefore, the price at the date of sale is the appropriate measure of the revenue foregone by Andina. However, we agree with Andina that the australes price on the date of sale is not the appropriate base on which to calculate credit expense. The price in U.S. dollars on the date of sale is the most accurate basis for measuring the revenue foregone by Andina to use when calculating Andina's home market credit expense. See also DOC Position in Comment 6.

Comment 8: Petitioners maintain that an average of the interest rates for foreign currency borrowing available to Andina during the POI is the most appropriate interest rate to use to calculate Andina's home market credit expense. Petitioners argue that, in light of the wide disparity of interest rates for austral borrowing during the POI, using an average of the foreign currency borrowing rates is more appropriate.

Andina argues that petitioners are being inconsistent in arguing for the use of dollar interest rates for credit expense on one hand, and for the use of austral home market sales prices on the other hand. Andina maintains that petitioners cite no legal authority for using interest rates in one currency and prices in another currency. Andina claims that the wide disparity in the austral borrowing rates during the POI was caused by hyperinflation, and that the credit expense should be calculated on the basis of the dollar sales price using dollar interest rates.

DOC Position: We agree with Andina. At verification we observed that Andina had access to foreign currency borrowings. Given that we are using the U.S. dollar denominated prices, the U.S. dollar interest rates are the appropriate rates to use to calculate Andina's home market credit expense.

Comment 9: Petitioners argue that the prices reported for Andina's purchases of packing material for its home market sales are less than the prices that Andina charges its customers for packing. Petitioners maintain that it is the Department's practice to add to FMV the revenue earned on packing. Therefore, petitioners maintain that the packing revenue that Andina earns on its home market sales should be added to Andina's home market prices.

Andina claims that the method used to report packing is correct and allows the Department to do a valid comparison. Andina argues that the adjustment proposed by petitioners is incorrect because Andina packs its home market sales in boxes, which cost more, and all of its U.S. sales in bags, which cost less. Andina maintains that the packing methodology used in the preliminary determination is correct.

DOC Position: We agree with petitioners. At verification, we observed that the price Andina charges its home market customers for packing is more than the cost that Andina incurs for its purchases of packing material. We view the price for packing, which is separately stated on Andina's home market sales invoices, as an integral part of the overall price of the merchandise. Since Andina realizes a separate profit on its price for packing in the home market, we have revised our calculations to include this profit in the home market prices for silicon metal. Since Andina uses both bags and boxes for home market packing but did not report which was used for each sale, we have used, as BIA, a packing cost which assumes equal use of bags and boxes. For this adjustment, we added the separate packing price to home market prices, then subtracted from this amount the average cost of home market packing, and finally added back the actual cost of packing for sales to the United States.

Comment 10: Andina argues that the Department should recalculate its export duty for U.S. sales. Andina maintains that the Department applied the rate of the export duty in effect on the date of sale in its preliminary determination. However, Andina argues that, at verification, the Department officials observed that Decree 713, Resolution 100/89 calls for the export duty to be applied to export sales on the date of shipment, not the date of sale. Therefore, Andina argues that the Department should use the export duty in effect on the date of shipment, not the date of sale when calculating U.S. price.

Andina also maintains that the Department incorrectly applied the export duty rate directly to the sales price in its preliminary determination. Andina argues that Department officials observed at verification that the taxable base on which the export duty is applied is the sales price less the cost of imported electrodes. Therefore, Andina argues that the Department should recalculate the export duty using the

sales price less the cost of imported electrodes as the taxable base.

DOC Position: We agree with Andina. At verification, we noted that the rate of export duty applied to export sales is based on the date of shipment, not the date of sale. We also noted that the export duty is applied to the sales price less the cost of imported electrodes.

Comment 11: Petitioners argue that since the Department was unable to confirm the chemical composition of Andina's sales, the Department should continue to compare all sales in the home market to all U.S. sales, with the exception of the sale in each market designated by Andina as "sil. polv." Petitioners argue that Andina has disclaimed any sales of material with a silicon content below 99 percent even though Andina's home market sales listing refers to sales of silicon metal with a silicon content of 98 percent. Petitioners maintain that there is no other evidence on the record indicating that Andina sold silicon metal during the POI with a silicon content of less than 98.5 percent or an iron content of more than 0.65 percent. Therefore, petitioners argue that, for purposes of price comparison, all of Andina's U.S. and home market sales (other than "sil. polv.") should be considered to be sales of grade 1 material.

Andina argues that the chemical analysis of the impurities in all silicon metal Andina produced in 1990 that Andina gave to the Department during verification can be used to calculate the silicon content of all silicon metal that Andina produced during the POI.

DOC Position: We agree with petitioners. Andina reported the silicon content of its sales as either 98 percent or 99 percent. In the preliminary determination, we compared all grade 1 sales, as defined in our questionnaire, in the home market to all grade 1 U.S. sales; and grade 4 sales to grade 4 sales in both markets. At verification, we were unable to verify the exact silicon content of any of Andina's sales during the POI. No chemical analysis or chemical certificates existed for Andina's individual sales during the POI. Because we were unable to verify the specific chemical composition of Andina's sales, as best information available (BIA) we compared all sales in the home market to all U.S. sales as grade 1 material.

We have excluded the product designated as "sil. polv." from our analysis for purposes of the final determination. This product, which accounts for an extremely small percentage of total U.S. sales, is similar to scrap or off-specification merchandise (*i.e.*, its silicon content was below customer requirements and it could not be sold at normal prices for silicon metal.) To account for this type of merchandise in our COP and CV analysis would pose an extremely complicated task in a hyperinflationary economy where our analysis is already difficult. Given that Andina's sales of grade 1 material account for well over 85 percent of the exports to the United States during the POI, the additional complexity of analysis required to include this extremely small percentage of sales in our analysis is not justified. The percentage of sales examined is well in excess of the Department's 60 percent dollar value and volume guidelines. See 19 CFR 353.42(b).

Comment 12: Petitioners argue that the Department should define the scope of investigation to include "silicon metal" with a silicon content of less than 96 percent. Petitioners maintain that the petition and a letter supplementing the petition did not set a minimum silicon content. Petitioners assert that Census Bureau import data show that substantial quantities of silicon metal containing less than 96 percent silicon already have entered the United States. Moreover, petitioners point to additional evidence that demonstrates that silicon metal containing less than 96 percent silicon is being imported into the United States.

Petitioners urge the Department not to specify a minimum silicon content. However, should the Department set a minimum content, petitioners maintain that it should be 90 percent. If the Department declines to alter the scope, petitioners suggest that the Department recognize that imports of a product with less than 96 percent silicon may be covered by an order issued in this proceeding as a "minor alteration" of the subject merchandise within the meaning of section 781(c) of the Act.

DOC Position: We have determined to leave the scope of this investigation unchanged. Prior to defining the scope of this investigation, we considered information from the petition, the Bureau of Mines, and the Customs Service. This information clearly indicates a common commercial meaning for "silicon metal" as a product with a silicon content between 96.00 and 99.99 percent. Furthermore, we have seen no evidence that merchandise containing less than 96 percent silicon and called "silicon metal" is being sold or offered for sale by Argentine producers. Therefore, we are unable to conclude, based on the information before us, that the less than 96 percent product is of the same class or kind as the above 96 percent product.

Comment 13: Petitioners contend that the Department should reject Andina's formula for allocating quartz and charcoal crushing expenses because Andina has understated its crushing costs in its silicon metal production. Petitioners argue that, because some of the crushed material is placed into inventory and not used in production, Andina has understated its crushing costs. Petitioners contend that the Department should allocate crushing costs based on a ratio of quartz/charcoal tonnage consumed in silicon metal production to total tonnage consumed, or a ratio of tonnage crushed for silicon metal use to total tonnage crushed.

Andina states that it calculated the cost of crushing quartz and charcoal for each month, and then assigned this cost to the cost of producing silicon metal on the basis of the amount of quartz or charcoal consumed in each furnace. Andina argues that this is the most reasonable methodology for calculating and allocating the crushing cost.

DOC Position: We agree with petitioners. We reviewed Andina's allocation methodology and determined that it did not provide an accurate measure of the crushing costs associated with silicon metal. Andina had allocated quartz and charcoal crushing costs to silicon metal each month based on the ratio of quartz and charcoal used in silicon metal production to the total amount of quartz and charcoal crushed. This methodology understated the crushing costs incurred by Andina in its silicon metal production because some crushed material is placed into inventory and not used in production. Therefore, for the cost calculations we allocated crushing costs based on the ratio of quartz/charcoal tonnage consumed in silicon metal production to total tonnage consumed.

Comment 14: Petitioners argue that since Andina provided no explanation as to why its claimed POI G&A expenses are so low, the Department should use a G&A ratio as BIA for both COP and CV calculations. Petitioners further contend that, if the Department does not use BIA for the allocation of G&A expenses, that the Department should use as BIA 10 percent of Andina's COM, according to section 773(e)(1)(B) of the Act. Petitioners argue that "other expenses" includes reserves which relate to the cost of Andina's operations; therefore, these "other expenses" should be included in the COP and CV.

Andina argues that the Department's calculation of G&A includes the income statement caption "other expenses." All

of the "other expenses" recorded in its financial statements reflect reserves for contingencies and not actual costs incurred. Andina further argues that the amount of unused reserves is added to its income for tax purposes; therefore, these "other expenses" are clearly not costs and should not be added to the COP.

DOC Position: We agree with petitioners. Andina did not provide any evidence that the expenses recorded on its financial statements reflected reserves for which no expenses had actually been incurred. Andina did not explain why it had continued to add to these "reserves" each year if no expenses had actually been incurred. Absent specific evidence to the contrary, the Department considers the costs recorded on a company's audited financial statements to be a reliable reflection of the company's actual income and expenses. See, e.g., Final Determination of Sales at Less Than Fair Value: Sweaters of Man-Made Fiber from Taiwan, 55 FR 34585 (August 10, 1990). Accordingly, we have included the "other expenses" listed in the company's financial statement in the G&A expenses for our COP/CV calculations.

Comment 15: Petitioners argue that Andina's allocation of factory overhead on the basis of price and production capacity is flawed and that the Department should use those costs actually incurred for a particular product. Petitioners contend that since Andina has understated its factory overhead expenses, the Department should use, as BIA, the verified May 1990 direct costs attributable to silicon metal as a percentage of Andina's total direct costs. Andina contends that its methodology for allocating factory overhead is reasonable. If the Department reallocates these costs, however, Andina contends they should be allocated to intermediate cost centers, and to any idle furnaces since overhead is not affected by the fact that a furnace is not operating.

DOC Position: We agree with petitioners. Andina's use of sales price and production capacity as a basis for allocating financial expenses is not appropriate. See e.g., Final Determination of Sales at Less Than Fair Value; Color Picture Tubes from Japan. 52 FR 44171 (November 18, 1987). Therefore, as BIA, we have reallocated factory overhead based on silicon metal's percentage of direct costs incurred in May 1990, as urged by petitioners.

Comment 16: Petitioners argue that Andina failed to allocate any indirect selling expenses to silicon metal. Petitioners contend that since Andina reported that it maintains a sales office in Buenos Aires, it obviously incurred indirect selling expenses. Petitioners believe that, as BIA for these selling expenses, the Department should use the result of the multiplication of two expenses to cost of goods sold ratios.

Andina argues that it has allocated indirect selling expenses, as described in its April 16, 1991, submission. Andina contends that all the expenses for its Buenos Aires sales office are reported in G&A.

DOC Position: We disagree with petitioners. At verification, we observed certain indirect selling expenses and have included these items as indirect selling expenses in the COP/CV calculations.

Comment 17: Petitioners contend that Andina's calculation of electricity cost is flawed because it is based on an average annual cost rather than actual monthly expenses. Petitioners argue that replacement costs for electricity in australes should be used instead of Andina's adjusted power costs.

Andina argues that its methodology was used in order to adjust seasonal changes in electricity costs to a constant production process. Andina contends that the unit cost of generating electric energy for a particular month is irrelevant because the monthly variations are determined by the seasonal period and that, because of the seasonal fluctuation in electric energy generation, it has calculated a weighted-average cost of electricity. Andina contends that it expressed its energy cost in dollars because the price of the invoiced energy is constant in dollar terms.

DOC Position: We agree with petitioners in that the submitted calculations do not provide an adequate basis for our final calculations. We have relied upon the actual monthly costs incurred and kilowatts consumed during the POI in preparing our COP/CV calculations.

Comment 18: Petitioners argue that although Andina assumed that all of its monthly materials purchases were made at month-end prices, Andina is in fact invoiced twice a month by most of its materials suppliers. Petitioners contend that if the first monthly invoice from Andina's suppliers covers material purchased by Andina during the previous month, the invoice should only be used in the calculation of the previous month's materials costs. Therefore, petitioners believe that the Department should review which monthly invoices should be used in the calculation of materials costs.

Andina argues that all material purchase invoices were reviewed at verification.

DOC Position: We reviewed materials purchase invoices at verification and have calculated replacement cost based on the month-end materials purchase invoices.

Comment 19: Petitioners argue that although Andina stated that furnaces are only shut down for maintenance approximately every third year, the cost of furnace maintenance is an expense that is borne by a furnace during its operation. Petitioners contend that, if Andina has not allocated to the POI expenses for silicon metal furnace maintenance performed during shutdowns, the Department should include any unallocated maintenance costs in Andina's cost data.

Andina contends that it has already allocated all of its maintenance costs relating to major furnace repairs. Andina argues that major repairs are allocated to an accrual account, which increases even when Andina does not have any major repairs. Andina further contends that this accrual account is offset by the expense account and is thus a cost for the period.

DOC Position: We agree with Andina. At verification, we did not note any unallocated maintenance costs. Accordingly, reported maintenance costs do not require adjustment.

Comment 20: Petitioners argue that freight and other transportation charges should be included in the costs of all materials. Petitioners state that if Andina has excluded transportation charges from its reported cost data, the Department must add them back in.

Andina contends that it has not excluded freight costs from reported electrode costs or any other costs; therefore, no further adjustments for transportation are necessary.

DOC Position: We agree with Andina. At verification, we observed that Andina's reported materials cost includes all applicable freight charges.

Comment 21: Andina states that any gain or loss attributable to carrying inventory would be insignificant. Andina believes that because the most significant inputs to its production process are acquired in dollars and because the finished product is priced in dollars, it is somewhat "immune" from Argentine inflation.

Petitioners argue that since Andina has reported inventory carrying gain/loss data for only its finished goods, the Department should impute inventory carrying costs for work in process and raw materials.

DOC Position: We agree with Andina. We have analyzed the information submitted by Andina and the information obtained at verification. Based on our analysis of this information, we are satisfied that Andina did not experience a loss as a result of carrying inventory during an inflationary period. Therefore, we have not included any amount for inventory carrying gain/loss in our COP/CV calculations.

Comment 22: Petitioners argue that since the COP data were reported exclusive of taxes on inputs, the taxes must be deducted from the home market sales prices in determining whether home market sales were made at less than COP.

DOC Position: We agree with petitioners. We have compared the COP with a tax-exclusive home market price.

Continuation of Suspension of Liquidation: In accordance with section 735(d)(1) of the Act, for Andina and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of silicon metal from Argentina, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 29, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting or a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/ manufacturer/ exporter	Weighted average margin percentage	Critical circum-stances
Andina	8.65	No.
All others	8.65	No.

ITC Notification: In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration. The ITC will make its determination whether these imports materially injure, or threaten material injury, to a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on silicon metal entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20.

Dated: August 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-18993 Filed 8-8-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions and Deletions

AGENCY: Committe for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 9, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 22, April 5, May 3, 31, June 14 and 21, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 12193, 14090, 20414, 24790, 27502 and 28540) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Slacks, Woman's, 8410-01-224-3326 thru -3367, 8410-01-105-4668 thru -4708

Paper, Toilet Tissue, 8540-00-530-3770, (Requirements for GSA Zone 4 only)

Services

Grounds Maintenance, Lexington Blue Grass Army Depot, Richmond, Kentucky

Grounds Maintenance, Department of Energy, Western Area Power Administration, Bismarck District Office, Bismarck, North Dakota

Janitorial/Custodial, Federal Building, 250 West Cherry Street, Carbondale, Illinois

Janitorial/Custodial, Building 243 "A-G" Bay, McClellan Air Force Base, California

Janitorial/Custodial for the following location in Peoria, Illinois:

Federal Building and U.S. Courthouse, 100 NE. Monroe Street, Social Security Administration Building, 2700 N. Knoxville Avenue

Janitorial/Custodial, Umatilla Depo. Activity, Hermiston, Oregon

Janitorial/Custodial, U.S. Army Reserve Centers, #1-9 Chisolm Street, #2-1050 Redmound Road, Charleston, South Carolina

Janitorial/Custodial, Fort Worth Federal Center, Fort Worth, Texas, for the following buildings:

Warehouse #31..... Section A–L
Warehouse #3..... Bin Area A–F
Warehouse #8 thru #12... Office and Rest Rooms
Warehouse #14..... Rest Rooms
Warehouse #23, 24 & 50.....

Janitorial/Custodial, Federal Building, 7th & Lafayette Streets, Moundsville, West Virginia

Janitorial/Custodial, Social Security Administration, 16th & Chapeline Streets, Wheeling, West Virginia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Topper, Woman's:

8410–01–187–9630	8410–01–187–9671
8410–01–187–9631	8410–01–187–9672
8410–01–187–9632	8410–01–187–9673
8410–01–187–9633	8410–01–187–9674
8410–01–187–9634	8410–01–187–9675
8410–01–187–9635	8410–01–187–9676
8410–01–187–9636	8410–01–187–9677
8410–01–187–9637	8410–01–187–9678
8410–01–187–9638	8410–01–187–9679
8410–01–187–9639	8410–01–187–9680
8410–01–187–9640	8410–01–187–9681
8410–01–187–9641	8410–01–187–9682
8410–01–187–9642	8410–01–187–9683
8410–01–187–9643	8410–01–187–9684
8410–01–187–9644	8410–01–187–9585
8410–01–187–9645	8410–01–187–9686
8410–01–187–9646	8410–01–187–9687
8410–01–187–9647	8410–01–187–9688
8410–01–187–9648	8410–01–187–9589
8410–01–187–9649	8410–01–187–9690
8410–01–187–9650	8410–01–187–9691
8410–01–187–9651	8410–01–187–9692
8410–01–187–9652	8410–01–187–9693
8410–01–187–9653	8410–01–187–9694
8410–01–187–9654	8410–01–187–9695
8410–01–187–9655	8410–01–187–9696
8410–01–187–9656	8410–01–187–9697
8410–01–187–9657	8410–01–187–9698
8410–01–187–9658	8410–01–187–9699
8410–01–187–9659	8410–01–187–9700
8410–01–187–9660	8410–01–187–9701
8410–01–187–9661	8410–01–187–9702
8410–01–187–9662	8410–01–187–9703
8410–01–187–9663	8410–01–187–9704
8410–01–187–9664	8410–01–187–9705
8410–01–187–9665	8410–01–187–9706
8410–01–187–9666	8410–01–187–9707
8410–01–187–9667	8410–01–187–9708
8410–01–187–9668	8410–01–187–9709
8410–01–187–9669	8410–01–187–9710
8410–01–187–9670	8410–01–187–9711

Pants, Woman's:

8410–01–187–9909	8410–01–187–9916
8410–01–187–9910	8410–01–187–9917
8410–01–187–9911	8410–01–187–9918
8410–01–187–9912	8410–01–187–9919
8410–01–187–9913	8410–01–187–9920
8410–01–187–9914	8410–01–187–9921
8410–01–187–9915	8410–01–187–9922
8410–01–187–9923	8410–01–190–9272
8410–01–187–9924	8410–01–190–9273
8410–01–187–9925	8410–01–190–9274
8410–01–187–9926	8410–01–190–9275
8410–01–187–9927	8410–01–190–9276
8410–01–187–9928	8410–01–190–9277
8410–01–187–9929	8410–01–190–9278
8410–01–187–9930	8410–01–190–9279
8410–01–187–9931	8410–01–190–9280
8410–01–187–9932	8410–01–190–9281
8410–01–190–9271	8410–01–190–4257

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–18940 Filed 8–8–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 9, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Box, Wood	8115–00–NSH–0168
8115–00–NSH–0156	8115–00–NSH–0169
8115–00–NSH–0157	8115–00–NSH–0173
8115–00–NSH–0158	8115–00–NSH–0174
8115–00–NSH–0159	8115–00–NSH–0175
8115–00–NSH–0160	8115–00–NSH–0178
8115–00–NSH–0161	8115–00–NSH–0186
8115–00–NSH–0162	8115–00–NSH–0192
8115–00–NSH–0164	8115–00–NSH–0197
8115–00–NSH–0167	

(Requirements for the Naval Regional Contracting Center, San Diego, CA only)

Services

Janitorial/Custodial, U.S. Army Reserve Center, 3001 Pleasant Valley Road, Altoona, Pennsylvania

Janitorial/Custodial, U.S. Army Reserve Center, 4th & Hiller Street, Brownsville, Pennsylvania

Janitorial/Custodial, U.S. Army Corps of Engineers, Raystown Lake, Raystown, Pennsylvania

Deletions

It is proposed to delete the following commodity and service from the Procurement List:

Commodity

Rag, Wiping, 7920–00–205–1711, (Requirements for Warner Robins AFB, GA only)

Service

Grounds Maintenance, Wheeler National Wildlife Refuge, Decatur, Alabama

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–18941 Filed 8–8–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, And Applicable OMB Control Number

DOD FAR Supplement, part 228, Bonds and Insurance, and the clauses at 252.228; OMB Control Number 0704–0216.

Type Of Request: Extension.

Average Burden Hours/Minutes Per Response: 1.093 hours.

Responses Per Respondent: 1.

Number Of Respondents: 1,450.

Annual Burden Hours: 1,585.

Needs and Uses: DOD FAR Supplement part 228 and the clauses at § 252.228 require contractors to submit information concerning certain data required to enable processing and/or monitoring of accident reports/insurance claims relating to various insurance clauses including but not

limited to war hazard losses, aircraft/missile accidents and munitions accidents.

Affected Public: Businesses or other for-profit, non-profit institutions and small businesses or organizations.

Frequency: On occasion.

Respondent Obligation: Required to obtain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: August 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18922 Filed 8–8–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 3, 1991; and Tuesday, September 10, 1991; Tuesday, September 17, 1991; and Tuesday, September 24, 1991, at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 93–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: August 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18923 Filed 8–8–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the committee at the DACOWITS 1991 Spring Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1991 Fall Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: September 9, 1991, 9:30 a.m.–4 p.m.

ADDRESSES: SECDEF Conference room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Captain Branda M. Weidner, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

Dated: 6 August 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18962 Filed 8–8–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 9, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to

do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact lsited below.)

ADDRESSES: Address comments to the Department of Energy Desk Office, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regualtory Commission.
2. FERC–515.
3. 1902–0097.
4. Hydorpower License—Declaration of Intention.
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 4 respondents.
10. 1 response.
11. 80 hours per response.
12. 320 hours.
13. To carry out the requirements of part I, section 23(b) of the Federal Power Act, the Declaration of Intention is filed by a prospective hydropower developer on a stream other than defined as U.S. jurisdictional waters thereby causing the Commission to establish whether or not it has jurisidiction over the proposed projects.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC August 5, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–18986 Filed 8–8–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–357–000, et al.]

The Kansas Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. The Kansas Power and Light Company

[Docket No. ER91–357–000]

August 1, 1991.

Take notice that on July 30, 1991, The Kansas Power and Light Company (KPL) tendered for filing an amendment to its original filing in the above captioned docket related to a proposed change in its Electric Interconnection Contract with Midwest Energy, Inc. (MWE) identified as Federal Energy Regulatory Commission Electric Rate Schedule No. 123.

Service Schedule P and Rate Schedule for Service Schedule P as amended are tendered for filing for the purpose of superseding Service Schedules K and L, and the pricing schedules and addenda related thereto.

KPL and MWE have determined that it is beneficial to both parties to revise the Term and Cancellation provision of the Electric Interconnection Contract to provide for a longer term mutual commitment, to revise other aspects of the participation power agreement and to consolidate the provisions of Service Schedule L into Service Schedule P.

Copies of the amendment were served upon Midwest Energy, Inc. and the Kansas Corporation Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Oildale Cogeneration Partners, L.P., a Delaware Limited Partnership

[Docket No. QF84–518–003]

August 1, 1991.

On July 11, 1991, as supplemented on July 30, 1991, Oildale Cogeneration Partners, L.P., (Applicant) a Delaware limited partnership, 23293 South Pointe Drive, suite 100, Laguna Hills, California 92653, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Witco refinery near Oildale, California, and will include combustion turbine generator, heat recovery boiler and Sealtherm oil heat recovery system.

The original certification was issued on April 25, 1985, (31 FERC 62,117). The instant recertification is requested due to an increase in the net electric power production capacity from 29MW to 38MW and a change in the ownership structure. CSW Development–I, Inc., an indirect wholly-owned subsidiary of Central and South West Corporation, a registered holding company under the Public Utility Holding Company Act of 1935, will have an ownership interest in the facility.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. The Cleveland Electric Illuminating Company

[Docket No. ER91–558–000]

August 1, 1991.

Take notice that on July 26, 1991, The Cleveland Electric Illuminating Company (CEI) tendered for filing a proposed amendment to the 1975 Interconnection Agreement between CEI and the City of Cleveland, Ohio (the City). CEI states that the amendment will provide for a third synchronous interconnection between the CEI system and the system operated by the Cleveland Public Power of the City, and for compensation to CEI for net interconnection (transfer) reactive power.

CEI has requested a waiver of the Commission's regulations in order to permit the amendment to become effective as of January 1, 1990. CEI states that the City does not oppose this request.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER91–151–000]

August 1, 1991.

Take notice that on July 29, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing supplemental information and a notice of termination in the above docket.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedules that were filed in this docket to become effective according to their terms.

Comment date: August 16, 1991, in accordance with Standard Paragraph E end of this notice.

5. PSI Energy, Inc.

[Docket No. ER91–474–000]

August 1, 1991.

Take notice that PSI Energy, Inc. (PSI), tendered for filing an Amendment to the FERC Filing in Docket No. ER91–474–000.

This Amendment gives a definition for the third party energy rates contained in the Interconnection Agreement with Northern Indiana Public Service Company as a result of a request by FERC Staff.

PSI has requested that the effective date, per the original filing, of April 15, 1991, remain unchanged.

The definition for third party energy rates contained in this filing will also apply to the Interconnection and Power Coordination Agreements with Louisville Gas and Electric Company, Cincinnati Gas and Electric Company, Central Illinois Public Service Company, Southern Indiana Gas and Electric Company, Hoosier Energy Rural Electric Cooperative, Inc., and Wabash Valley Power Association, Inc.

Copies of the filing were served on Northern Indiana Public Service Company, Louisville Gas and Electric Company, Cincinnati Gas and Electric Company, Central Illinois Public Service Company, Southern Indiana Gas and Electric Company, Hoosier Energy Rural Electric Cooperative, Inc., Wabash Valley Power Association, Inc., the Illinois Commerce Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Public Service Company

[Docket No. ER91-554-000]

August 1, 1991.

Take notice that on July 25, 1991, Iowa Public Service Company (IPS) tendered for filing Emergency Electric Interconnection and Operating Agreement (Interconnection Agreement) with East River Electric Power Cooperative (East River).

IPS indicates that the Interconnection Agreement reflects the establishment of a transmission interconnection between the two systems. This agreement does allow for East River to take power and energy from the Company. Paybacks to the Company shall be in the form of inkind payments.

IPS states that copies of this filing were served on East River Electric Power Cooperative, the Iowa Utilities Board, Rural Electrification Administration, and South Dakota PUC.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp Electric Operations

[Docket No. ER91-553-000]

August 1, 1991.

Take notice that PacifiCorp Electric Operations ("PacifiCorp") on July 25, 1991, tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, an Electric Supply Agreement ("Agreement" between PacifiCorp and Brigham City Corporation ("Brigham").

The Agreement provides for the sale to Brigham of supplemental power and energy.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations that a waiver of prior notice be granted and that an effective date of October 1, 1989 be assigned. Such date being consistent with the date service under the Agreement commenced.

Copies of this filing have been supplied to Brigham and the Utah Public Service Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER91-555-000]

August 1, 1991.

Take notice that Niagara Mohawk Power Corporation (Niagara), on July 25, 1991, tendered for filing an agreement between Niagara Mohawk and Indeck Energy Services of Corinth, Inc. ("Indeck") dated June 26, 1991 providing for certain transmission services to Indeck. This agreement provides for the transmission and delivery by Niagara Mohawk of specified quantities of power produced by Indeck to be sold by Indeck to Consolidated Edison Company of New York (Con Ed) under separate agreement. Firm services under this agreement are proposed to commence as of the commercial operation date of Indeck's Production Facility, as that term is defined in the Indeck-Con Ed power purchase agreement. (The commercial operation date is currently projected by Indeck to be April 1993.)

Niagara Mohawk requests waiver of the Commission's notice requirements. Niagara states that waiver is warranted because approval of this contract at this time is necessary for the successful obtainment of financing for construction of the Production Facility.

Copies of this filing were served upon Indeck and the New York State Public Service Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Southern Utilities Company

[Docket No. ER91-559-000]

August 1, 1991.

Take notice that Iowa Southern Utilities Company (ISU) on July 29, 1991, tendered for filing as an initial rate schedule a Transmission Agreement whereby ISU will provide transmission services to the city of Pella, an Iowa Municipal Utility (Pella) during a one year term to enable Pella to receive energy from Muscatine Power and Water (MPW). ISU proposes an effective date of May 1, 1991, and requests waiver of the Commission's notice requirement

A copy of the filing was served upon the Iowa State Utilities Board and Pella.

Comment date: August 12, 1991 in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp Electric Operations

[Docket Nos. ER89-493-003 and ER89-494-002]

August 1, 1991.

Take notice that on July 25, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing in compliance with the Commission's letter order dated June 18, 1991, a compliance report showing the refunds forwarded to all of PacifiCorp's customers which were due refunds as a result of the March 18, 1991 Settlement Agreement under Docket Nos. ER89-493-000 and ER89-494-000.

Copies of the filing were served upon all parties hereto, the Wyoming Public Service Commission, the Utah Public Service Commission, the Public Utility Commission of Oregon, the Idaho Public Utilities Commission, the Public Utilities Commission of Colorado, the Montana Public Service Commission, the Public Utilities Commission of California, the Nevada Public Service Commission, the Arizona Corporation Commission and the Washington Utilities & Transportation Commission.

Comment date: August 16, 1991, in accordance with Standard paragraph E at the end of this notice.

11. Iowa Public Service Company

[Docket No. ER91-557-000]

August 1, 1991.

Take notice that on July 25, 1991, Iowa Public Service Company (IPS) tendered for filing revised Electric Transmission Interconnection Agreement (Interconnection Agreement) and revised exhibits A and B to the Interconnection Agreement with Corn Belt Power Cooperative (CBPC), dated March 1, 1991.

IPS indicates that the revised Interconnection Agreement and revised Exhibits reflect and changes the parties have made in the points of interconnection and the interconnection facilities between the two systems.

IPS also requests a waiver of the Commission's rules so that the Interconnection Agreement may be approved retroactive to March 1, 1991.

IPS states that copies of this filing were served on Corn Belt Power

Cooperative and the Iowa Utilities Board.

Comment date: August 16, 1991, in accordance with Standard paragraph E at the end of this notice.

12. Georgia Power Company

[Docket Nos. ER91-171-000, ER91-204-000 and ER91-205-000]

August 2, 1991.

Take notice that on August 1, 1991, Georgia Power Company (Georgia Power) tendered for filing supplemental information concerning Georgia Power's December 21, 1990 filing of a revised and Restated Integrated Transmission System Agreement, a Block Power Sale Agreement and a Coordination Service Agreement.

Georgia Power states that the supplemental information provided in this filing addresses questions raised by the Commission in response to the aforementioned December 21, 1990 filings.

Comment date: August 12, 1991 in accordance with Standard Paragraph E at the end of this notice.

13. Detroit Edison Company

[Docket No. ER91-211-000]

August 2, 1991.

Take notice that on July 22, 1991, Detroit Edison Company (Detroit Edison) tendered for filing additional materials in connection with an initial electric rate scheduled entitled Belle River Participation Agreement between Detroit Edison and Michigan Public Power Agency in this docket.

Comment date: August 16, 1991, in accordance with Standard Paragraph E end of this notice.

14. Arkansas Power & Light Company

[Docket No. ER91-549-000]

August 2, 1991.

Take notice that on July 22, 1991, Arkansas Power & Light Company tendered for filing the following documents:

1. Addendum to Agreement for Purchase of Electric Service by City of Benton, Arkansas from Arkansas Power & Light Company.

2. Addendum to Agreement for Purchase of Electric Service by City of Prescott, Arkansas from Arkansas Power and Light Company.

3. Addendum to Agreement for Purchase of Electric Service by Farmers Electric Cooperative Corporation and Arkansas Power and Light Company.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Pennsylvania Power & Light Company

[Docket No. ER91-356-000]

August 2, 1991.

Take notice that on July 18, 1991, Pennsylvania Power & Light Company (PP&L) tendered for filing Supplemental information in response to Commission staff concerns with certain provisions of the Agreement between PP&L and Public Service Electric and Gas Company in this docket.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. American Municipal Power-Ohio, Inc. and Connecticut Municipal Electric Energy Cooperative v. Niagara Mohawk Power Corporation

[Docket No. EL91-47-000]

August 2, 1991.

Take notice that on July 26, 1991, American Municipal Power-Ohio, Inc. and the Connecticut Municipal Electric Energy Cooperative (CMEEC) tendered for filing a complaint against Niagara Mohawk Power Corporation and request for establishment of refund effective date and motion to consolidate with Docket EL91-44-000.

Comment date: September 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. American Municipal Power-Ohio, Inc. and City of Cuyahoga Falls, Ohio v. Ohio Edison Company

[Docket No. EL91-48-000]

August 2, 1991.

Take notice that on July 26, 1991, American Municipal Power-Ohio, Inc. (AMP-Ohio) and City of Cuyahoga Falls, Ohio tendered for filing a complaint and Motion for Summary Disposition against Ohio Edison Company.

AMP-Ohio alleges that Ohio Edison has charged and proposed to continue to charge AMP-Ohio and/or Cuyahoga Falls for certain costs of improvements to transmission facilities Ohio Edison claims are necessary to provide Cuyahoga Falls with permanent transmission service at 138 kV.

Comment date: September 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18934 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8221-022 and 9049-008]

Hydroelectric Applications (Alaska Energy Authority and Carex Hydro); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 8221-022.

c. *Date Filed:* June 7, 1991.

d. *Applicant:* Alaska Energy Authority.

e. *Name of Project:* Bradley Lake Project.

f. *Location:* The project is located on the Bradley River in Kenai Peninsula Borough, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Charlie Bussell, Executive Director, Alaska Energy Authority, 701 East Tudor Road, P.O. Box 190869, Anchorage, AK 99519-0869, (907) 561-7877.

i. *FERC Contact:* Kenneth Fearon, (202) 219-2657.

j. *Comment Date:* August 21, 1991.

k. *Description of Amendment:* The licensee propose to construct a 25-foot by 25-foot by 3-foot deep intake basin and a 10-foot-high diversion dike at the foot of a small waterfall which presently discharges onto a narrow bench above Bradley Lake and flows into upper Battle Creek. A 1,900-foot-long diversion ditch will be constructed from the diversion dike and intake basin through three existing ponds to Bradley Lake. The diversion would add approximately 0.9 square miles of drainage basin to the Bradley Lake Project for power generation.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. *Type of Application:* Surrender of License.

b. *Project No.:* 9049–008.
c. *Date Filed:* June 3, 1991.
d. *Applicant:* Carex Hydro.
e. *Name of Project:* Pioneer.
f. *Location:* On Deckers Creek, Monongalia County, West Virginia.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Jacky Trotignon, Western Equipment Corp., 2175 Lemoine Avenue, suite 507, Fort Lee, NJ 07024, (201) 947–0260.
i. *FERC Contact:* Michael Dees, (202) 219–2807.
j. *Comment Date:* August 22, 1991.
k. *Description of Project:* On June 29, 1989, a license was issued to construct, operate and maintain the Pioneer Project No. 9049. The project would have consisted of: (1) A reinforced concrete dam 120 feet long, 10 feet high, and incorporating an intake, weir, and sedimentation cell; (b) a reservoir of one-half acre surface area and 2.5 acre-feet volume at a normal maximum surface elevation of 1,289 feet msl; (c) a 42-inch diameter steel penstock 4,200 feet long; (d) a powerhouse 20 feet high, 45 feet long, and 30 feet wide housing two turbine-generators of 1.5 MW combined capacity; (e) the 0.48-kV generator leads; (f) a 0.48/12.5-kV transformer; (g) a 12.5-kV transmission line 3 miles long; and (h) appurtenant facilities.

The licensee has decided to surrender the license because the existing land owner has terminated the lease agreement and the new rates for purchase of power have dropped to 1.5 cents per kilowatthour. No construction has commenced.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 5, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18937 Filed 8–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–2562–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP91–2562–000]

August 1, 1991.

Take notice that on July 23, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP91–2562–000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon partially a gas gathering and transportation service provided to Natural Gas Pipeline Company of America (NGPL) and a request for any necessary waivers of the first-come, first-serve provisions of Northwest's FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to abandon the gas gathering and transportation agreement with NGPL dated December 20, 1977 (the agreement), which was authorized by the Commission in an order issued April 17, 1979, in Docket No. CP78–183 (7 FERC 61,057). It is stated that the agreement is set forth in Northwest's FERC Gas Tariff, Original Volume No. 2, as Rate Schedule X–53. Northwest states that pursuant to the agreement, Northwest gathers and transports up to 25,000 Mcf per day of natural gas from reserves that NGPL would either develop or otherwise acquire in Northwest's Bar X, Grand Valley and Grand Gas Gathering System in Uintah and Grand Counties, Utah. It is stated that Northwest delivers this gas to an existing point of interconnection with El Paso Natural Gas Company (El Paso) near Ignacio, Colorado in La Plata County. Northwest further states that pursuant to the agreement it has the option to purchase up to 25 percent of the gas gathered for NGPL.

It is indicated that by a terminationagreement dated April 15, 1991, Northwest and NGPL mutually agreed to terminate the agreement effective April 15, 1991, provided that Northwest receives Commission approval to retain the priority of service date established under the agreement for any future transportation under a replacement blanket certificate transportation agreement of the supplies now subject to Rate Schedule X–53. Thus, Northwest also requests any necessary waiver of the first come, first serve provisions of its FERC Gas Tariff in order to retain the priority of service date of December 20, 1977.

Northwest states that it has entered into a nonjurisdictional replacement gas gathering agreement with NGPL dated April 15, 1991, for up to 25,000 MMBtu of natural gas per day from all gathering receipt points served by Northwest. Northwest also states that as a replacement for the transportation service in Rate Scheudle X–53, Northwest and NGPL have entered into an open access, interruptible transportation agreement under Northwest's Rate Schedule TI–1. It is indicated that this replacement transportation agreement provides for the transportation of up to 25,000 MMBtu per day from the Grand Valley, Grand Gas, and Bar X mainline receipt points to the Ignacio interconnection with El Paso in La Plata County, Colorado.

Northwest states that in the event the Commission does not grant the requested waiver, Northwest alternatively requests approval to abandon only the gathering service provided under Rate Schedule X–53. Northwest indicates that it would then

retain Rate Schedule X-53 solely to provide the transportation service.

Northwest does not propose to abandon any facilities.

Comment date: August 22, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP91-2601-000]

August 1, 1991.

Take notice that on July 26, 1991, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP91-2601-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate eleven (11) additional points of delivery for existing wholesale customers for mainline taps under Columbia's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia states that it requests authorization to construct and operate the facilities necessary to provide the additional points of delivery, as follows:

Wholesale customer	Commercial	Residential	Industrial	Annual volumes (Dth)
Columbia Gas of Ohio, Inc	1	9		49,000
Mountaineer Gas Company		1		150

Columbia states that the additional points of delivery have been requested by its wholesale customers for residential, commercial and/or industrial service. Columbia further states that it has been advised that no major non-jurisdictional facilities would be required as a result of the proposed service. It is indicated that the amount of any such non-jurisdictional construction associated with the proposed points of delivery has been included in the individual project description with the exception of residential hookups. It is further indicated that Columbia will comply with the environmental requirements of § 157.206(d) of the Commission's Regulations prior to the construction of its facilities.

Columbia states that the quantities to be provided through the new delivery points would be within its currently authorized level of service and would be within existing peak day and annual proposed seasonal entitlements of such customers. Columbia further states that the sales to be made through the proposed points of delivery would be under its currently effective service agreements with such customers under Rate Schedule CDS.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Gulf States Transmission Corporation

[Docket Nos. CP91-2606-000, CP91-2607-000]

August 1, 1991.

Take notice that on July 30, 1991, Gulf States Transmission Corporation (Applicant), 1324 North Hearne, Suite 300, Shreveport, Louisiana 71107, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.23 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] average day, annual	Receipt points	Delivery points	Start up date, rate schedule, service type	Related [2] docket contract date
CP91-2606-000 (7-30-91	Crosstex Marketing Company.	20,000 16,000 5,600,000	TX, LA	LA, TX	5-01-91, IT, interruptible.	ST91-8864-000 3-01-91
CP91-2607-000 (7-30-91	Westchester Gas Company.	50,000 40,000 14,000,000	TX	LA	5-01-91, IT, interruptible.	ST91-8865-000 1-04-91

[1] Quantities are shown in Mcf.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

4. Algonquin Gas Transmission Company, Texas Eastern Transmission Corporation

[Docket No. CP91-1580-001]

August 2, 1991.

Take notice that on July 25, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135 and Texas Eastern Transmission Corporation (Tetco), 5400 Westheimer Court, Houston, Texas 77056, jointly referred to as Applicants, filed in Docket No. CP91-1580-001 a joint application, as supplemented on July 31, 1991, pursuant to section 7(c) of the Commission's Regulations under the natural Gas Act to amend the application filed by Applicants in Docket No. CP91-1580-000 to request a reallocation of quantities between two customers under Algonquin's proposed Rate Schedules AWS, WPS and WFT and to reallocate

volumes between Algonquin and another customer under Tetco's Rate Schedule SS–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes to reallocate 125 MMBtu per day from the Town of Middleborough, Massachusetts under proposed Rate Schedule AWS to Consolidated Edison Company of New York, Inc. (Con Ed) under proposed Rate Schedules WPS and WFT, 14 and 111 MMBtu per day, respectively. Tetco also requests to reallocate 111 MMBtu per day of storage service under Rate Schedule SS–1 from Algonquin to Con Ed.

Comment date: August 23, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Texas Gas Transmission Corporation, Midwestern Gas Transmission Company

[Docket Nos. CP91–6218–000, CP91–6219–000, CP91–6220–000, CP91–6229–000]

August 2, 1991.

Take notice that Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301; and Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88–686–000 and Docket No. CP90–174–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, Average day, Annual MMBtu	Receipt [1] point	Delivery points	Contract date, rate schedule, service type	Related docket, Start up date
CP91–2618–000 (7–30–91)	Indiana Gas Company, Inc.	8,000 4,869 1,777,100	LA, IN, KY, TX, OLA, TN, OTX, IL, AR, OH.	IN	May 8, 1991 FT firm.	ST91–9475–000 7–01–91
CP91–2619–000 (7–30–91)	Tejas Power Corporation..	0,000 25,000 36,500,000	LA, IN, KY, TX, OLA, TN, OTX, IL, AR, OH.	LA	August 11, 1989 IT, interruptible.	ST91–9477–000 7–01–91
CP91–2620–000 (7–30–91)	TXG Gas Maketing Company.	3,062 2,000 730,000	KY	KY	May 25, 1990 IT, interruptible.	ST91–9476–000 7–02–91
CP91–2629–000 (7–31–91)	Meridian Oil Trading, Inc..	100,000 10,000 [2] 36,500,000	TN, IL, IN, KY	TN, IL, IN, KY	July 1, 1991 IT, interruptible.	ST91–9766–000 7–01–91

[1] Offshore Louisiana and offshore Texas are shows as OLA and OTX.
[2] Midwestern's quantities are in dekaterms.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP91–2604–000]

August 2, 1991.

Take notice that on July 29, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP91–2604–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation and gas storage service provided by Panhandle for the Village of Morton, Illinois (Morton), an existing sales customer of Panhandle, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the service to Morton which was authorized by the Commission in Docket No. CP79–84 and was carried out pursuant to the provisions of a Gas Storage and Transportation Agreement between Panhandle and Morton dated October 13, 1978, on file with the Commission as Panhandle's Rate Schedule TS–4. Panhandle states that in a letter agreement dated September 20, 1990, Panhandle and Morton agreed to terminate the transportation and gas storage service. Panhandle requests that the abandonment authorization be made effective retroactive to April 1, 1991. It is asserted that the proposal involves no abandonment of facilities. It is stated that no other customers of Panhandle would be affected by the proposed abandonment.

Comment date: August 23, 1991, in accordance with Standard Paragraph F at the end of the notice.

7. Texas Gas Transmission Corporation

[Docket No. CP91–2597–000]

August 2, 1991.

Take notice that on July 26, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed a Docket No. CP91–2597–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon firm sales service to the Dayton Power and Light Company (Dayton), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Texas Gas provides for the firm sale of up to 102,856 MMBtu of natural gas to Dayton pursuant to a November 1, 1990, service agreement. Texas Gas states that by letter dated May 31, 1991, Dayton requested that it be allowed to convert 15,000 MMBtu per day to firm transportation service, effective August 1, 1991. Texas Gas states that because the service agreement between Texas Gas and Dayton is not "an eligible firm sales service agreement", Texas Gas cannot utilize the automatic abandonment

authority provided in § 284.10 of the Commission's Regulations; therefore, Texas Gas is seeking authority to abandon its sales obligation to Dayton by the amount sought to be converted by Dayton effective the date of such conversion.

It is stated that no abandonment of facilities is requested.

Comment date: August 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

Viking Gas Transmission Company, Midwestern Gas Transmission Company, Transwestern Pipeline Company, Northern Natural Gas Company, Tennessee Gas Pipeline Company

[Docket Nos. CP91-2610-000,[3] CP91-2611-000, CP91-2612-000, CP91-2613-000, CP2614-000]

August 2, 1991.

Take notice that the above reference companies (Applicants) filed in the above reference dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notices requests are not consolidated.

Docket no. (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date, rate schedule	Related 2 dockets
				Receipt	Delivery		
CP91-2610-000 (7-30-91)	Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252.	Aquila Energy Marketing Corporation.	100,000 100,000 36,500,000	WI, MN, ND	WI, MN, ND	06-01-91, IT-2	ST91-9542-000 CP90-273-000
CP91-2611-000 (7-30-91)	Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252.	Williams Gas Marketing Company.	50,000 50,000 18,250,000	TN, IL, IN, KY	IL, IN, KY	07-04-91, IT	ST91-9541-000 CP90-174-000
CP91-2612-000 (7-30-91)	Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	Western Counties Gas Co., Inc.	5,000 3,750 1,825,000	AZ, NM, OK, TX	AZ, NM, OK, TX	07-01-91, ITS-1	ST91-9641-000 CP88-133-000
CP91-2613-000 (7-30-91)	Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	Tenaska Marketing Ventures.	250,000 187,500 91,250,000	OK, TX, KS, NM, WI, IA, MN, NE.	KS, TX, OK, WI, IA, SD, MN, NM, NE, MI, IL.	07-01-91, IT-1	ST91-9563-000 CP86-435-000
CP91-2614-000 (7-30-91)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	Polaris Pipeline Corporation.	100,000 100,000 36,500,000	OLA, LA, OTX, TX, MS, TN, AL, NY, NJ, KY, WV, AR.	LA, TX, MA, NY, NJ, MS, PA, WV, RI, AL, NH, CT, TN, OH, KY, AR.	07-08-91, IT	ST91-9485-000 CP87-115-000

[1] Quantities are shown in dt for Viking, Midwestern and Tennessee; and MMBtu for Transwestern and Northern.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it

9. Panhandle Eastern Pipe Line Company

[Docket No. CP91-2605-000]

August 2, 1991.

Take notice that on July 29, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed an application pursuant to section 7(b) of the Natural Gas Act to abandon a transportation service for Zenith Natural Gas Company (Zenith) under Rate Schedule T-45, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle indicates that it was authorized by order issued July 30, 1981, in Docket No. CP91-171-000 to

implement that portion of an August 26, 1980, agreement between Panhandle and Zenith which permitted Panhandle to transport for Zenith up to 1,500 Mcf per day from a point of interconnection of the facilities of Zenith and Cities Service Gas Company (now Williams Natural Gas Company) in Barber County, Kansas to Zenith at a point on Panhandle's facilities west of Haven, Kansas. Panhandle states that Williams would receive the gas at the Barber County, Kansas point and redeliver thermally equivalent volumes to Panhandle at existing points of interconnection in Kingfisher County, Oklahoma and Grant County, Kansas through an exchange arrangement authorized by order issued April 7, 1981, in Docket Nos. CP80–557–000, CP81–60–000 and CP81–60–001. Panhandle states that by letter dated April 25, 1991, it invoked its contractual right to terminate the agreement.

No abandonment of facilities is proposed.

Comment date: August 23, 1991, in accordance with Standard Paragraph F at the end of the notice.

10. Steuben Gas Storage Company

[Docket No. CP89–1684–004]

August 2, 1991.

Take notice that on July 16, 1991, Steuben Gas Storage Company (Applicant) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1684–004, pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and § 157.6 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations thereunder, a petition to amend a certificate of public convenience and necessity, issued on September 19, 1990, and as amended on October 25, 1990, which authorized the Applicant to develop, construct, and operate an underground gas storage field and related facilities and to render firm gas storage service to certain distribution companies located in the states of Massachusetts, New Jersey, and South Carolina, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that as a result of the delay in the commencement of storage service, and the unavailability of transportation service from Transcontinental Gas Pipe Line Company during the 1991–92 storage season, several of the Applicant's customers have made alternative arrangements with respect to the service proposed by Applicant.

Specifically, two customers, New Jersey Natural Gas Company (New Jersey Natural) and City of Union, South Carolina (City of Union), have terminated their storage agreements with Applicant. A third customer, Elizabethtown Gas Company (Elizabethtown), has requested to assign during the first year of service, its Gas Storage Agreement to another customer, Commonwealth Gas Company (Commonwealth). The service released by New Jersey Natural has been acquired by Public Service Electric and Gas Company, and the service released by City of Union has been acquired by Commonwealth.

As a result of the proposed assignment and contract terminations, the customer mix for Applicant's storage service has changed. However, the total volume of storage service to be provided, and the rates and cost of service have not. Applicant has filed to amend its certificate to reflect the new customer mix.

Comment date: August 23, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP91–2616–000]

August 2, 1991.

Take notice that on July 30, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP91–2616–000 a request pursuant to § 157.205, 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate approximately 1,600 feet of 6-inch pipeline, a six-inch delivery tap and related facilities, located in St. Charles, Louisiana, under United's blanket certificate issued in Docket No. CP82–430–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed pipeline, delivery tap, and related facilities would enable United to transport an estimated average of 25,000 Mcf per day of natural gas for LaSER Marketing Company to serve Union Carbide's Taft Plant under United's ITS Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. Superior Offshore Pipeline Co., Columbia Gas Transmission Corporation

[Docket Nos. CP91–2631–000, CP91–2632–000]

August 2, 1991.

Take notice that on July 31, 1991, Superior Offshore Pipeline Co., 12450 Greenspoint Drive, Houston, Texas 77060, and Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86–387–000, and Docket No. CP86–240–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt point [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2631–000 (7–31–91)	Linder Oil Company	13,250 13,250 1,590,000	OLA	LA	6–1–91, T–1, Firm	ST91–9768–000 6–22–91

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt point [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2632-000 (7-31-91)	Bishop Pipeline Corporation (marketer).	757,000 605,600 276,305,000	KY, PA, OH, WV, NY.....	Various.....	5-16-91, ITS, Interruptible.	ST91-9112-000 5-23-91

[1] Offshore Louisiana is shown as OLA.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18935 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF91-2011-000, EF91-2021-000, EF91-2041-000 and EF91-2071-000]

United States Department of Energy—Bonneville Power Administration; Filing

August 2, 1991.

Take notice that on August 2, 1991, the Bonneville Power Administration (BPA) tendered for filing proposed rate adjustments for its wholesale power and transmission rates pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2). Pursuant to Commission regulation 300.21, 18 CFR 300.21, BPA seeks final confirmation of the proposed rates, effective October 1, 1991. In the alternative, BPA seeks interim approval effective October 1, 1991, pursuant to Commission regulation 300.20. Exceptions to these requested approval dates are hereafter noted.

BPA's wholesale power rates and transmission rates are proposed to be increased. BPA's proposed wholesale power rates are designed to increase revenues over the two-year test period by approximately $57.0 million, which represents an increase of approximately 1.4 percent. BPA's proposed transmission rates are designed to increase revenues by approximately $39.7 million, or 15.8 percent. With these increases BPA's total test year revenues will be approximately $4.5 billion.

BPA request approval effective October 1, 1991 through September 30, 1933 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF-91 Priority Firm Power Rate; IP-91 Industrial Firm Power Rate; SI-91 Special Industrial Firm Power Rate; CF-91 Firm Capacity Rate; CE-91 Emergency Capacity Rate; NR-91 New Resource Firm Power Rate; NF-91 Nonfirm Energy Rate; SS-91 Share-the-Savings Energy Rate; RP-91 Reserve Power Rate. BPA requests approval of its proposed SP-91 Short-Term Surplus Firm Power Rate effective October 1, 1991 through September 30, 1996. BPA requests approval of its proposed VI-91 Variable Industrial Power Rate for the period beginning July 1, 1993 through June 30, 1996. BPA requests approval for an extension of its IP-PF Rate Link Methodology for the period beginning October 1, 1991 through September 30, 1995, or alternatively through June 30, 1996 if the VI-91 rate is approved. BPA requests approval for the PPL-90 Pacific Power & Light Company Capacity Contract Formula Rate, as modified in this rate filing, for the period beginning October 1, 1991 through August 31, 2011.

BPA requests approval effective October 1, 1991 through September 30, 1993 for the following proposed transmission rate schedules and their associated General Transmission Rate Schedule Provisions: FPT-91.1 Formula Power Transmission; IR-91 Integration of Resources; IS-91 Southern Intertie Transmission; IN-91 Northern Intertie Transmission; IE-91 Eastern Intertie Transmission; ET-91 Energy Transmission; MT-91 Market Transmission; FPT-91-3 Formula Power Transmission; UFT-83 Use-of-Facilities Transmission; TGT-1 Townsend-Garrison Transmission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 16, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18936 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3982-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 22, 1991 through July 26, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-UMT-K54020-CA Rating EC2, Tasman Corridor Mass Transit System Improvements, between Milpitas and Northern San Jose and Mountain View/Sunnyvale, Funding, Santa Clara County, CA.

Summary

EPA expressed concerns with potential impacts to wetlands, floodplains and water quality. EPA also requested documentation concerning project impacts to threatened and endangered species, noise impacts and other natural resources.

EPA No. D-USA-D11017-00 Rating EC2, Cameron Station Comprehensive Base Closure and Realignment of Fort Belvoir, Fort Myer and Fort McNair, Implementation, Fairfax and Arlington Counties, VA and Washington, DC.

Summary

EPA's primary basis for the EC-2 rating is the failure to provide air analyses data to ensure there are no adverse impacts to the air quality resulting from the additional 3,835 employees commuting to and from the Fort Belvoir installation.

ERP No. D-USN-B35019-CT Rating EO2, Thames River Navigation Channel Dredging Project, Mouth of the River to Pier 33 at the Naval Submarine Base, Implementation and COE Section 404 Permit, Groton and New London, New London County, CT.

Summary

EPA commented that the draft EIS does not adequately assess the potential environmental impact of the proposed action and that more scientific information, particularly the suitability of the sediment for ocean disposal and the availability of clean material for capping, must be provided. With this information, EPA will oppose the issuance of a 404 permit to allow disposal of the dredged material and recommend that other alternatives to dredging and ocean disposal be more fully evaluated and considered in the EIS.

Final EISs

ERP No. F-AFS-K65129-CA, Stormy II Watershed/Fire Recovery, Implementation, Sequoia National Forest, San Joaquin Valley Air Basin, Tulare and Kern Counties, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-COE-G32010-AR, Montgomery Point Lock and Dam Construction, McClellan-Kerr Arkansas River Navigation System, Implementation, Desha County, AR.

Summary

EPA has no further comments on the selected action.

ERP No. F1-AFA-D65103-PA, Allegheny National Forest Understory Vegetation Management Amendment, Implementation, Warren, McKean, Forest and Elk Counties, PA.

Summary

EPA concurs with the decision to amend the Allegheny National Forest Plan with alternative 2 as described in the final EIS.

Dated: August 5, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-18964 Filed 8-8-91; 9:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3982-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities. General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed July 29, 1991 Through August 2, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910258, Final EIS, AFS, CA, Mount Vida Planning Area Integrated. Resource Management Plan, Implementation, Modoc National Forest, Warner Mountain Ranger District. Modoc County, CA Due: September 9, 1991, Contact: Douglas Schultz (916) 279-6116.

EIS No. 910259, Draft EIS, MMS, AL, CA, FL, LA, NC, AK, DE, GA, MD, NJ, NY, RI, TX, WA, OR, SC, VA, Mid 1991 thru Mid 1997 Outer Continental Shelf (OCS) Comprehensive Gas and Oil Resources Management Program, Schedule of Sales Adoption, Leasing, Offshore Coastal Counties of Al, AK, CA, DE, FL, GA, LA, MD, NJ, NY, NC, OR, RI, SC, TX, VA and WA, Due: October 29, 1991, Contact: Debra Purvis (703) 787-1674.

EIS No. 910260, Final EIS, AFS, UT, Brighton Ski Resort Area Development and Master Plan, Approval, Possible New Long-Term Special Use Permit and COE section 404 Permit, Wasatch-Cache and Uinta National Forests, Big Cottonwood Canyon, Salt Lake and Wasatch Counties, UT, Due: September 9, 1991, Contact: Julie Hubbard (801) 524-5030.

EIS No. 910261, Final EIS, USA, MA, NJ, VA, MA, MI, Army Materials Technology Laboratory Closure and Realignments, Transfers to Detroit Arsenal, MI; Picatinny Arsenal, NJ; and Fort Belvoir, VA Middlesex, Norfolk, Suffolk and Essex Counties, MA, Due: September 9, 1991, Contact: Susan Brown (617) 647-8536.

EIS No. 910262, Draft EIS, EPA, VA, Offshore Norfolk Ocean Dredged Material Disposal Site, Designation, Norfolk, VA, Due: September 30, 1991, Contact: William Muir (215) 597-2541.

Amended Notices

EIS No. 910216, Draft Supplement, AFS, CA, Goleta and Gaviota Substations 66 kV Transmission Line Construction, Phase I, New Alternative and Updated Information, Goleta Substation to Exgen Substation in Las Flores Canyon, Santa Barbara County, CA, Due: August 19, 1991, Contact: Lawrence Bembry (805) 683-6711.

Published FR 7-05-91—Officially Withdrawn by Preparing Agency.

Dated: August 6, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-18965 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3981-1]

Coast of Oregon and Washington: Designation of Ocean Dredged Material Disposal Sites; Intent to Prepare Environmental Impact Statements

AGENCY: U.S. Environmental Protection Agency (EPA) Region 10.

ACTION: Notice of Intent to prepare environmental impact statements (EIS) on the final designation of Ocean Dredged Material Disposal Sites (ODMDS) located off the coast of Oregon and Washington.

PURPOSE: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* (MPRSA), gives the Administrator of the U.S. Environmental Protection Agency (EPA) the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations (39 FR 16186, May 7, 1974).

The U.S. EPA, Region 10, in accordance with section 102(2) (c) of the National Environmental Policy Act (NEPA) will prepare draft EISs on the designation of ODMDS off six estuaries along the coast of Oregon and Washington. Five EISs will be prepared, with the cooperation of the U.S. Army Corps of Engineers, Portland District, for fiscal designation of ODMDS off of Tillamook Bay, Yaquina Bay, the Siuslaw River, Umpqua River, and Port Orford, in the State of Oregon. One EIS will be prepared, with the cooperation of the U.S. Army Corps of Engineers, Seattle District, for final designation of an ODMDS off of Willapa Bay in the State of Washington. These EISs will provide the information necessary to designate one or two ODMDS at each location. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1977, and 40 CFR part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. John Malek, Dredging and Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD-128, Seattle, Washington, 98101-3188, Phone (206) 553-1286.

SUMMARY: Federally-authorized navigation channels exist at each of these locations along the northwestern Pacific coast which require periodic maintenance dredging to ensure safe navigation. In 1977, EPA designated interim ODMDS at each location which have been used as necessary to receive volumes of dredged sediments (40 CFR 228.12). These interim sites usually were locations that had long historical use as disposal sites. Studies to support final site designation were conducted by the Corps of Engineers and Coordinated with EPA. Designation of final ODMDS sites at these locations will provide a feasible and environmentally acceptable disposal site for present and anticipated future maintenance work in the area.

Since 1977, twelve ODMDS have received final designation within Region 10: Nome, AK (2 sites); Grays Harbor, WA (2 sites); Mouth of the Columbia River, WA and OR (4 sites); Coos Bay, OR (3 sites); and Coquille, OR (1 site). In addition, draft EISs have been or are being prepared for two other ODMDS designations: Chetco, OR (1 site) and Rogue River, OR (1 site). A final EIS for designation of the Chetco, OR ODMDS and a draft EIS for designation of the Rouge River, OR ODMDS are scheduled for public release later this summer 1991. Preparation of EISs for each of the remaining interim sites will support EPA's designation actions for those locations.

NEED FOR ACTION: The Corps of Engineers, Portland District, has requested that EPA designate an ODMDS offshore of Tillamook Bay, Yaquina Bay, the Siuslaw River, Umpqua River, and Port Orford, Oregon, for disposal of sediments dredged to maintain the federally-authorized navigation projects at each location and for disposal of materials during other actions authorized in accordance with section 103 of the MPRSA. The Corps of Engineers, Seattle District, has made similar request for an ODMDS offshore of Willapa Bay, Washington. EPA has voluntarily committed to prepare EISs in conjunction with ocean dumping site designations. An EIS will be prepared for each designation action that will provide the necessary information to evaluate alternatives and designate a preferred ODMDS.

Alternatives

1. No action: The no action alternative is defined as not designating an ocean disposal site and termination of ocean disposal for this area.

2. Alternative disposal options in the nearshore, mid-shelf, and shelf break region of the Pacific Ocean, and on the uplands. This may include evaluation of adjusting the interim ODMDS.

Scoping

Scoping meetings are not contemplated. Scoping for each EIS will be accomplished with affected federal state, and local agencies, and with interested parties by correspondence, telephone contact, etc.

Estimated Date of Release

One or two draft EISs are scheduled to be available for public comment each year beginning this year. The First ODMDS EIS will be for Umpqua, OR, and should be available in late summer 1991. EISs for the remaining sites will be released in approximately the following order: Siuslaw, OR; Tillamook Bay, OR; Willapa Bay, WA; Yaquina Bay, OR; and Port Orford, OR.

Responsible Official

Dana Rasmussen, Regional Administrator, Region 10.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-18967 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00108; FRL-3933-1]

Carpet Policy Dialogue; Memorandum of Understanding: Testing Program for Carpet Products and Receipt of the Carpet Policy Dialogue Interim Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has entered into a Memorandum of Understanding (MOU) with the Carpet and Rug Institute (CRI) for the purpose of initiating the provisions stated within the context of the Carpet Policy Dialogue--Consensus Statement: Testing Program for Carpet Products. The MOU provides for carpet product testing for total volatile organic compound emissions (TVOC) and reporting of data as outlined in the testing program. EPA has received an Interim Progress Report from the Carpet Policy Dialogue describing activities from August 21, 1990 through April 10, 1991.

DATES: The MOU was entered into on May 22, 1991.

FOR FURTHER INFORMATION CONTACT: The MOU and the Interim Progress Report are available to the public in the Carpet Emissions Administrative Record located at the TSCA Public Docket Office. This Administrative Record is available for reviewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal

holidays at the following address: Environmental Protection Agency, rm. NE-G004, 401 M St., SW., Washington, DC 20460. Copies may be obtained from the following address: Dave Kling, Acting Director. Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202)554-1404, TDD: (202)554-0557, or FAX (202)554-5603 (document requests only). For further information on the Carpet Policy Dialogue Project contact Richard W. Leukroth, Jr., Carpet Policy Dialogue Coordinator, Telephone: (202)382-3832.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 1990, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA) seeking regulatory action to address carpet emissions. EPA denied the petition (55 FR 17404, April 24, 1990). In lieu of the section 21 proceedings, EPA convened the Carpet Policy Dialogue on August 21, 1991, and set a different mission for the group. EPA charged the dialogue to work out the details of voluntary product testing programs that report TVOC emissions that off-gas from carpet, carpet installation adhesives, and carpet cushion products. In addition, the Carpet Policy Dialogue was asked to explore and, where possible, reach agreement on a variety of issues including: The sampling and analytical methods for the voluntary product testing for TVOC's, any additional information needed, identification of cost-effective process changes to reduce TVOC emissions, information about carpet installation practices, and to provide the interested public with information on TVOC emissions.

The Carpet Policy Dialogue formed three working Subgroups (Product Testing, Process Engineering, and Public Communications) to respond to the EPA charter. The Carpet Policy Dialogue on TVOC emissions is a nonregulatory approach focusing on responsible care/product stewardship through voluntary actions on the part of industry. It emphasizes pollution prevention, exposure reduction, and addresses the public desire for information that could lead to consumer choice. The Carpet Policy Dialogue is an example of how government, industry, public interest groups, and the scientific community can work together to resolve exposure reduction and pollution prevention issues, including those related to indoor air exposures. Proposed testing programs are developed during Subgroup discussion and submitted to the Carpet Policy Dialogue for the benefit of a consensus process of review and comment. In reaching consensus and accepting the carpet testing program, the Carpet Policy Dialogue indicates to its sponsor (EPA) that such a statement can provide the basis for a MOU to initiate voluntary action(s) in response to the charter set by EPA in the **Federal Register** notices (55 FR 17404 and 55 FR 31640).

II. Memorandum of Understanding

The EPA and CRI entered into the MOU on May 22, 1991. The MOU signed by EPA and CRI formally establishes a framework in which a voluntary program response for actions described in the **Federal Register** notices noted above can be fulfilled. It contains provisions initiating the Carpet Testing Program on TVOC emissions and certain follow-on activities.

A. Carpet Testing Program

Under the terms and conditions of the MOU, the CRI has voluntarily agreed to conduct product testing to determine TVOC emissions factors from samples of 25 representative carpet product types. The objectives of the Carpet Testing Program are to: (1) Study carpet emissions decay curve data, (2) characterize quantitatively the profile of TVOC emissions of carpet product types currently in commerce, and (3) address the question of TVOC emission variability, or the lack thereof, across carpet product types.

B. Participants

Placement of responsibilities for the actions described in the MOU is with the President of the Carpet and Rug Institute and the Director of EPA's Office of Toxic Substances.

III. Carpet Policy Dialogue - Interim Progress Report

In conjunction with the public outreach activities of the Carpet Policy Dialogue an Interim Progress Report was submitted to EPA. This report reviews activities and accomplishments of the Carpet Policy Dialogue from August 21, 1990 through April 10, 1991. The report is a product of the Public Communications Subgroup of the Carpet Policy Dialogue. It was reviewed and approved for submission to the EPA by the Carpet Policy Dialogue Plenary.

The report contains background information about the dialogue process, describes structural organization, and explains the nature of consensus and voluntary actions. It describes the activities of the three working Subgroups, lists both direct and indirect accomplishments attributed to the Carpet Policy Dialogue, and contains five appendices that list participants and describe Carpet Policy Dialogue products or proposed products.

It is the intent of the Carpet Policy Dialoque to update the Interim Progress Report and submit a final Compendium Report to EPA after the conclusion of their deliberations.

Dated: July 8, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-18971 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, city/state	File No.	MM Docket No.
I		
A. Edward F. and Pamela J. Levine; Endwell, NY.	BPH-900514MM	91-198
B. Virginia Caldwell Kozlowski; Endwell, NY.	BPH-900514MN	
C. Maurice F.A. Battisti; Endwell, NY.	BPH-900515ME	
D. Lois W. O'Connor; Endwell, NY.	BPH-900515MG	
E. Great Scott Broadcasting; Endwell, NY.	BPH-900516ML	
F. JB Communications; Endwell, NY.	BPH-900516MO	
G. Allswell Broadcasting, Inc.; Endwell, NY.	BPH-900516MP	
H. Mary C. Murray; Endwell, NY.	BPH-900516MT	
I. Carol A. Morgan; Endwell, NY.	BPH-900516MU	
J. Endwell FM Associates; Endwell, NY.	BPH-900516MQ	(Dismissed)

Issue Heading and Applicants

1. Air Hazard, G
2. Contingent Environmental, A, B, C, D, F, G, H, I
3. Comparative, A, B, C, D, E, F, G, H, I
4. Ultimate, A, B, C, D, E, F, G, H, I

II		
A. Lenora Alexander; Strasburg, CO.	BPH-900102MI	91-195

Applicant, city/state	File No.	MM Docket No.
B. MYM Communications, Limited Partnership; Strasburg, CO.	BPH-900102MJ	

Issue Heading and Applicants
1. Contingent Environmental, A, B
2. Comparative, A, B
3. Ultimate, A, B

III

A. Kenneth Osborne; Virgie, KY.	BPH-891219MI	91-197
B. Hobart C. Johnson; Virgie, KY.	BPH-891227MG	

Issue Heading and Applicants
1. Contingent Environmental, A, B
2. Comparative, A, B
3. Ultimate, A, B

IV

A. WLIK, Inc.; Newport, TN.	BPH-900222MP	91-196
B. WNPC, Inc.; Newport, TN.	BPH-900222MQ	

Issue Heading and Applicants
1. Contingent Environmental, A, B
2. Comparative, A, B
3. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commissioin's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-18915 Filed 8-8-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of a package, call the FSA, Report Clearance Officer, 202-401-5604)

State Legalization Impact Assistance Grants (SLIAG)—0970—0079—section 204 of Public Law 99-603 requires that states submit annual applications for funding and that the Secretary report annually to Congress. In order to carry out the requirements of the statute, we require that states submit annual reports, in addition to the annual application.

Respondents: State or local government; *Number of Respondents:* 54; *Frequency of Response:* Annually; *Average Burden per Response:* 50 hours; *Estimated Annual Burden:* 5,400 hours. *OMB Desk Clearance Officer:* Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: July 25, 1991.

Sylvia E. Vela,

Deputy Associate Administrator, OMIS.

[FR Doc. 91-18728 Filed 8-8-91; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

[Announcement Number 175]

Availability of Funds for Fiscal Year 1991 For A Cooperative Agreement for Preventive Health Services Assessment of the Year 2000 Prevention Objectives

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1991 (FY 1991) for a supplemental award to the Public Health Foundation for the Preventive Health Services Assessment of the Year 2000 Objectives. This award will augment and expand the existing cooperative agreement by: Increasing the capacity of state and local health departments to evaluate the accomplishments and services delivered to both general and minority populations, setting priorities, and planning programs funded under the Preventive Health and Health Services (PHHS) Block Grant.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This cooperative agreement is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)) as amended.

Eligible Applicants

This is not a formal request for applications. Assistance will be provided only to the Public Health Foundation for the continued conduct of this project. No other application is solicited.

Availability of Funds

Approximately $500,000 will be available in FY 1991 for a supplemental award to build capacity in program evaluation, particularly related to programs funded under the PHHS Block Grant. Funding estimates may vary and are subject to change.

Purpose

The purpose of this cooperative agreement is to accumulate and provide to state and local health officials programmatic and expenditure information and, through mini-grants and workshops, to (1) build state and local capacity to evaluate the accomplishments and services delivered to both the general and to minority populations, set priorities, and plan programs funded through the PHHS Block Grant; and (2) take advantage of unique data sources in states to expand the knowledge base on minority health.

Program Requirements

In performing activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. The recipient will conduct program activities designed to increase the capacity of state and local health departments to evaluate the accomplishments and services delivered, set priorities, and plan programs funded under the PHHS Block Grant.

2. The recipient will develop programs to increase the capacity of state and local health departments to assess accomplishments and services delivered, set priorities, plan programs for the general population, and analyze existing data on minority populations and subpopulations, particularly as defined by the Year 2000 Objectives and, where possible, utilizing health status indicators called for in objectives specified in the priority area of Surveillance and Data Systems.

3. The recipient will design and conduct workshops for state and local health officials to standardize data elements to determine achievement of the year 2000 Health status objectives, and evaluate the accomplishments of programs funded by the PHHS Block Grant to develop and conduct training for the Public Health Foundation Core Data set.

4. The recipient will complete all details related to conducting the workshops described in 2. above (including identifying site, negotiating cost, inviting participants, arranging travel for participants, and participating in the workshops.)

B. CDC Activities

1. Collaborate in the design of workshops.
2. Jointly facilitate workshops.
3. Disseminate results of workshops.

Evaluation Criteria

The application for supplemental funds will be received by a CDC established Objective Review Committee and evaluated on the basis of the following weighted criteria:

1. Evidence of the recipient's understanding of the problem and the purpose of this supplemental award and its relationship to existing approved programmatic activities. (10 points)

2. The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period. (20 points)

3. The adequacy of the applicant's plan to carry out the activities proposed. (30 points)

4. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project. (30 points)

5. The applicant's capability to provide the staff and resources necessary to perform their part of the project. (10 points)

6. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement funds. (Not Weighted)

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR 100, are not applicable to this program.

Catalog of Federal Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Ferry, NE., Atlanta, Georgia 30305, on or before September 4, 1991.

1. Deadline: The application shall be considered as meeting the deadline if it is either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (The applicant should request a legibly-dated U.S. Postal Service Postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. A private metered postmark shall not be acceptable as proof of timely mailing.)

2. Late Application: An application which does not meet the criteria in either 1.a. or 1.b. above is considered a late application. A late application will be returned to the applicant.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference Announcement number 175 and contact the following:

Business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Road, NE., Atlanta, GA 30305, (404) 842–6594 or FTS 236–6594.

Programmatic technical assistance may be obtained from Edward L. Hunter, NCHS, Presidential Building, 6525 Belcrest Road, room 1100, Hyattsville, MD, 20782, (301) 436–7142 or C. Joseph Webb, 1600 Clifton Road NE., (K30), Atlanta, GA 30333, (404) 488–5299 or FTS 236–5299.

A copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: August 1, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–18950 Filed 8–8–91; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1991:

Name: National Advisory Committee on Rural Health.

Date and Time: September 23, 1991; 8:45 a.m.–12:30 p.m.

Place: Cannon House Office Building, room 210, First and Independence Avenue, SE. Washington, DC 20515.

Date and Time: September 23–25, 1991; 2:30 p.m.

Place: Wyndom Bristol Hotel, 2430 Pennsylvania Avneue, NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to continue monitoring progress on many of the issues raised in its first three years.

Eight newly appointed members will be introduced and retiring members will be recognized. Some portion of the Work Groups (Health Care Financing Work Group, Health Personnel Work Group, and Health Services Delivery Work Group) meetings will be devoted to developing recommendations to be reported in the Fourth Report to the Secretary.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: August 6, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–19000 Filed 8–8–91; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on July 26, 1991.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of request)

1. National Environmental Policy Act: Policies and Procuedres—21 CFR part 25—0910–0910—The National Environmental Policy Act (NEPA) requires each Federal Agency to consider the environmental effects of its actions. Firms wishing to market new products regulated by FDA must submit applications requesting approval. Certain applications must contain environmental information for determining whether the proposed action will have a significant environmental impact. *Respondents:* Businesses or other for-profit, Federal Agencies or employees, small businesses or organizations. *Burden per Response:* 1 hour.

(NOTE: Burden for these information requirements is included in individual clearances where NEPA considerations apply).

2. Methadone Treatment Quality Assurance System Feasibility Study—New—This project will assess the feasibility of establishing a national system to monitor and report the quality and effectiveness of treatment provided by registered methadone programs. Client level data will be collected by interviews and record abstraction. *Respondents:* Individuals or households or other for-profit, businesses, Federal agencies or employees, non-profit institutions and small businesses or organizations. *Number of Respondents:* 5,430; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .64 hours; *Estimated Annual Burden:* 3,511 hours.

3. Individual National Research Service Award (NRSA) and Related Form—0925–0002—The NRSA program provides to selected individuals support on training experiences in biomedical and behavioral research. Awards are made to individual applicants for specified training proposals, selected as a result of a national competition. This series of forms is used by individuals to apply for, activate, terminate, travel, and provide for payback of a National Research Service Award. *Respondents:* Individuals or households, businesses or other for-profit, Federal agencies or employees, non-profit institutions and small businesses or organizations.

	No. of respondents	No. of respondents per respondent	Average burden per response
Initial Application	3,309	1	20 hours.
Application for Continuation	1,414	1	7 hours.
Activation Notice	661	1	.08 hour.
Termination Notice	4,914	1	.50 hour.
Payback Agreement	3,060	1	.08 hour.
Annual Payback Activities Certification	20,000	1	.33 hour.
Reference Letter	9,927	1	.33 hour.

Estimated Total Annual Burden: 88,709 hours.

4. Validation of Pneumococcal Vaccination Status Among Hawaii Medicare Eligibile—New—A study to validate the vaccination status (pneumococcal vaccine) of a sample of Medicare beneficiaries will be conducted for the Centers for Disease Control in collaboration with the Health Care Financing Administration. The beneficiaries as well as their health care providers will be surveyed. This survey is part of a larger study to examine the clinical effectiveness of pneumococcal vaccination. *Respondents:* Individuals or households; *Number of Respondents:* 1,125; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.237 hours; *Estimated Annual Burden:* 267 hours.

5. Technical Assistance to Enhance the Statistical and Analytic Capacity of State and Local Public Health Professionals for Year 2000 Applications—New—Applicants for training in setting and evaluating health objectives for the Year 2000 must complete an application form for use by the instructor in selecting training applicants. An annual survey of training need of public health employees will be conducted among State Centers/Public Health Agencies. *Respondents:* Individuals or households; State or local governments.

	No. of respondents	No. of respondents per respondent	Average burden per response
Application for Training	330	1	.25 hour.
Annual Needs Survey	56	1	.33 hour.

Estimated Annual Burden: 101.

6. Family of HIV Seroprevalence Surveys—0920–0232—This study is designed to measure the level of HIV prevalence in selected populations in the U.S. It consists of a family of both blinded and non-blinded serologic surveys among patients in TB clinics, STD clinics, family planning and other women's health clinics and drug abuse treatment clinics, as well as studies among HIV positive blood donors, transfusion recipients and their heterosexual partners and homeless persons. *Respondents:* Individuals or households; *Number of Respondents:* 60,149; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .255 hours; *Estimated Annual Burden:* 15,364 hours.

7. Pilot Study on Sample Surveys of National Drug and Alcohol Treatment Units/Clients (The National treatment Study)—New—This pilot study will collect data from 32 drug and alcohol treatment units and 224 clients recently admitted for treatment. The purpose of this data collection is to describe the National drug and alcohol addiction treatment system. Results from this pilot study will be used for a national treatment study of 400 facilities and 3000 clients. *Respondents:* State or local governments, Individuals or households, businesses or other for-profit, non-profit institutions, and small businesses or organizations.

	No. of respondents	No. of responses per respondent	Average burden per response
Clients	224	1	1 hour
Providers	416	1	.36 hour

Estimated Annual Burden: 376.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 2, 1991.

Phyllis Zucker,

Acting Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91–18869 Filed 8–8–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on August 2, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

Applications For Benefits Under the Federal Mine Safety and Health Act of 1977, As Amended (Widow's Claim, Child's Claim, Dependent Claims)—0960–0118—The information collected on the forms SSA–47/48/49 is used by the Social Security Administration (SSA) to identify those claimants eligible for benefits under the appropriate provisions of the Federal Mine Safety and Health Act of 1977, as Amended. The affected public consists of widows, surviving children, parents and sisters of a deceased miner.

Number of Respondents: 2700.

Frequency of Response: 1.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 495.

OMB Desk Officer: Laura Oliven.

(Call Reports Clearance Officer on (301) 965–4149 for copies of Package)

Railroad Employment Questionnaire—0960–0078—The information is used by the Social Security Administration (SSA) to coordinate with the Railroad Retirement Board in the processing of certain claims for Social Security benefits. The affected public consists of claimants who indicate employment in the railroad industry.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 10,417.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 2, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91–18916 Filed 8–8–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3299]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 30, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies—Peformance Funding System: Determination of Operating Subsidy (FR–2784).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must determine an appropriate "projected occupancy percentage" to be used in calculating operating subsidy eligibility under the Performance Funding System. Effective in FY 92, projected occupancy percentage is to be 98 percent of available units (up from 97 percent under previous rule); comprehensive occupancy plans are eliminated.

Form Number: HUD–52728A.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
905.720(b)(1)	2,400		1		1		2,400
905.108(b)(1)							
905.720(b)(2)(i)(e)							
905.108(b)(2)(i)(e)	2,400		1		.5		1,200
905.725(b)(3)	2,400		1		.75		1,800
990.109(b)(3)							
905.730(e)							
0.110(e)	2,400		1		.75		1,800

Total Estimated Burden Hours: 7,200.

Status: Reinstatement.

Contact: John T. Comerford, HUD, (202) 708–1872, Wendy Swire, OMB, (202) 395–6880.

Dated: July 30, 1991.

Proposal: Floodplain Management and Protection of Wetlands.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: 24 CFR part 55 prescribes decisionmaking procedures that applicants and grantees in certain programs must comply with before HUD assistance can be used for projects that may affect floodplains and wetlands. Records must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.

Form Number: None.

Respondents: State or local governments.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,200		1		.40		1,280

Total Estimated Burden Hours: 1,280.

Status: New.

Contact: Truman Goins, HUD, (202) 708–2894, Wendy Swire, OMB, (202) 395–6880.

Dated July 30, 1991.

Proposal: Public and Indian Housing Drug Eliminating Program.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must apply for grant funds to use in eliminating drug-related crime in public and Indian housing projects. The application process includes developing a plan, strategy, seeking tenant comments, certifying compliance with HUD requirements and providing a comprehensive drug prevention program.

Form Number: None.
Respondents: State or local governments and non-profit institutions.
Frequency of Submission: On occasion.
Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Section 961.15	1,000		1		24		24,000
Section 961.18	5,000		1		1		5,000
Section 961.20	1,000		1		32		32,000
Section 961.28(a)	1,000		2		24		48,000
Section 961.28(b)	1,000		1		8		8,000

Total Estimated Burden Hours: 117,000.
Status: Reinstatement.
Contact: Mike Main, HUD, (202) 708–1197, Wendy Swire, OMB, (202) 395–6880.

Dated: July 30, 1991.

Proposal: Handbook 4315.1, Property Disposition Handbook-Multifamily Properties.
Office: Housing.
Discription of the Need for the Information and its Proposed Use: When the Department becomes owner or mortgagee-in-possession of an apartment project, HUD contracts for professional real estate management services, including the inventorying of chattels, making a management survey, accounting for project expenses. and renting apartments.
Form: HUD Handbook 4315.1.
Respondents: Individuals or households, businesses or other for-profit, small businesses of organizations.
Frequency of Submission: On occasion.
Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection Varies from	75–2,200		1–1,150		1/60–22		9,885

Total Estimated Burden Hours: 9,855.
Status: Extension.
Contact: Marc A. Harris, HUD, (202) 708–4280, Wendy Swire, OMB, (202) 395–6880.

Dated: July 30, 1991.

[FR Doc. 91–18951 Filed 8–8–91; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–38]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588 .

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C).

Properties reviewed are listed in this Notice according to the following categories: suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice, (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholdings agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (202) 693–4583; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DCT, 400 Seventh Street SW., room 10317, Washington, DC 20590; (202) 366–5601. (These are not toll-free numbers.)

Dated: August 2, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 08/09/91

Suitable/Available, Buildings (by State)

Alabama

Bldg. T00108
Fort Rucker
6th Avenue
Fort Rucker, Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120270
Status: Unutilized
Comment: 24,992 sq. ft., 1 story wood structure, most recent use—youth center gymnasium, possible asbestos, off-site use only

Arizona

Bldg. 70117—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120306
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional

Bldg. 70118—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120307
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional

Bldg. 70119—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120308
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional

Bldg. 70120—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120309
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 70225—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3,813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83006—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2,062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83007—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2,000 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83008—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2,192 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83015—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2,325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

California

Bldg. 60
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120315
Status: Unutilized
Comment: 1,024 sq. ft., 2 story concrete-wood plaster, possible asbestos, off-site use only, most recent use—nose hangar

Bldg. 95
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120316
Status: Unutilized
Comment: 392 sq. ft., 1 story raised portable, off-site use only, most recent use—radar maint. shop

Bldg. 186
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120317
Status: Unutilized
Comment: 996 sq. ft., 1 story steel, off-site use only, most recent use—storage

Bldg. 196
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120318
Status: Unutilized
Comment: 1,029 sq. ft., stucco structure, off-site use only, most recent use—storage

Bldg. 197
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120319
Status: Unutilized
Comment: 720 sq. ft. 1 story stucco structure, off-site use only, most recent use—storage, possible asbestos

Bldg. 262
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120320
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage.

Bldg. 263
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120321
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Bldg. 265
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120322
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Bldg. 268
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army

Property Number: 219120323
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Georgia

Bldg. 95
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120253
Status: Unutilized
Comment: 1,006 sq. ft. 1 story, most recent use—fire station annex, needs rehab.

Bldg. 1234
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120254
Status: Unutilized
Comment: 16,148 sq. ft., 2 story, most recent use—officer's club, needs rehab

Bldg. 1684
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120255
Status: Unutilized
Comment: 2,671 sq. ft., 1 story, needs rehab, most recent use—administraion/general purpose.

Bldg. 1724
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120256
Status: Unutilized
Comment: 943 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 1827
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120257
Status: Unutilized
Comment: 943 sq. ft., 1 story, needs rehab, most recent use—administration/general purpose.

Bldg. 2150
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3,909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 2212
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120259
Status: Unutilized
Comment: 4,720 sq. ft., 2 story, needs rehab, most recent use—drug abuse center.

Bldg. 2213
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120260
Status: Unutilized
Comment: 4,720 sq. ft., 2 story, needs rehab, most recent use—drug abuse center.

Bldg. 2214
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120261
Status: Unutilized
Comment: 2,253 sq. ft., 1 story, needs rehab, most recent use—enlisted persons dining room.

Bldg. 2215
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120262
Status: Unutilized
Comment: 1,844 sq. ft., 1 story, needs rehab, most recent use—day room.

Bldg. 2409
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9,348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2548
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120264
Status: Unutilized
Comment: 2,337 sq. ft., 2 story, needs rehab, most recent use—clinic w/o beds.

Bldg. 2590
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3,132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldg. 5284
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120267
Status: Unutilized
Comment: 5,310 sq. ft., 2 story, needs rehab, most recent use—trainee barracks.

Bldg. 194
Fort George G. Meade
½ Street
Fort Meade, Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219120252
Status: Unutilized
Comment: 1,550 sq. ft., wood frame, possible asbestos, needs rehab, most recent use—storage, off-site use only.

Tennessee

Area Q—Housing Area—Q–4
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120272
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Area Q—Housing Area—Q–15
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120273
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Area Q—Housing Area—Q–19
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120274
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Texas

Harlingen USARC
1920 East Washington
Harlingen, Co: Cameron TX 78550–
Landholding Agency: Army
Property Number: 219120304
Status: Excess
Comment: 19,440 sq. ft., 1 story wood brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center.

Land (by State)

Illinois

Portion, JAAP
Joliet Army Ammunition Plant, Co: Will IL 60436–
Location: Approx. 15 miles south of Joliet on the east side of Interstate 55
Landholding Agency: GSA
Property Number: 549130003
Status: Excess
Comment: 1.25 acres, most recent use—aquatic sampling station, subject to occasional flooding
GSA Number: 2–GR(1)–IL–450–FF

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton, Co: Ramsey MN 55113–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comments: Approx. 25 acres, possible contamination, secured area with alternate access.

Suitable/Unavailable Properties, Buildings (by State)

New York

Federal Building I
830 Third Avenue
Brooklyn, Co: Kings NY 11232–
Landholding Agency: GSA
Property Number: 549130004
Status: Excess
Comment: 77,157 sq. ft., 8 story concrete steel frame, needs rehab, portion of space occupied.
GSA Number: G–NY–806

Tennessee

Area Q—Housing Area—Q–1
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120271
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Area Q—Housing Area—Q–29
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120275
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Utah

Bldg. 101
Tooele Army Depot, North Area
2 miles south of Tooele on State Hwy 36
Tooele, Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219120305
Status: Underutilized
Comment: 1,698 sq. ft., 1 story, most recent use—admin. and supply

Unsuitable Properties, Buildings (by State)

Tennessee

U.S. Army Reserve Center
920 Cherokee Avenue
Nashville, Co: Davidson TN 37027–
Landholding Agency: GSA
Property Number: 549120066
Status: Excess
Reason: Other
Comment: extensive deterioration
GSA Number: 4–D–TN–630

Properties To Be Excessed, Buildings (by State)

California

Bldg. 270
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120324
Status: Unutilized
Comment: 90 sq. ft., concrete/aluminum, off-site use only, most recent use—aircraft steam cleaning bldg.

South Carolina

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120096
Status: Unutilized
Comment: 2,340 sq. ft., one story concrete block; most recent use—communications station.

Bldg. #2 U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120097
Status: Unutilized
Comment: 2,050 sq. ft., one story concrete block; most recent use—communications station.

Land (by State)

Michigan

U.S. Coast Guard—Air Station
Traverse City, Co: Grand Traverse MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use—Helo landings.

South Carolina

Land—U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120098
Status: Unutilized
Coment: 55 acres (88 acres submerged) tidal marshland, potential utilities.

[FR Doc. 91–18736 Filed 8–8–91; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–01–4320–01]

Meeting of the Elko District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District Grazing Advisory Board Meeting.

SUMMARY: A meeting of the Elko District Grazing Advisory Board will be held on September 11, 1991. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Year 1991 and 1992.

2. Proposed allotment Management Plans, and

3. Allotment evaluations and proposed grazing agreements and decisions, as well as other matters that may come before the Board.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 11:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 4, 1991.

Dated: August 2, 1991.

Rodney Harris,

District Manager.

[FR Doc. 91–18961 Filed 8–8–91; 8:45 am]
BILLING CODE 4310–HC–M

[CO–070–01–4320–12–241A]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 12, 1991. The meeting will convene in the conference room at the Bureau of Land Management Glenwood Springs Resource Area Office, 50629, Highway 6 & 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) minutes of the previous meeting; (3) Colorado Range Update; (4) "The New Range Wars;" (5) The Eagle County Sludge Disposal; (6) Equipment costs; (7) Range Betterment Fund project proposals; (8) Public presentations; (9) Advisory Board project status and proposals; and (10) schedule for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:30 p.m. and 2 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 11, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Minutes of the district office will be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 243–6552.

Bruce Conrad,

District Manager.

[FR Doc. 91–18918 Filed 8–8–91; 8:45 am]
BILLING CODE 4310–84–M

[UT–942–00–4212–13; U–65689]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 1,119.58 acres of public land out of Federal ownership. This action will also open 1,099.53 acres of reconveyed lands to surface entry, mining, and mineral leasing.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to Stanley R. and Steven G. Smith, for the following described lands pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716.

Salt Lake Meridian, Utah

T. 8 S., R. 3 W.
Sec. 1, lots 2, 3, 4, SW¼NW¼, W½SW¼;
Sec. 11, E½E½;
Sec. 12, W½W½, SE¼SW¼, SW¼SE¼;
Sec. 13, NW¼NE¼, N½NW¼;
Sec. 14, NE¼NE¼;
Sec. 23, Lot 8, 9, and 16;
Sec. 24, W½SW¼;
Sec. 25, SE¼SE¼, NE¼SW¼, SE¼NW¼.
Containing 1119.58 acres.

2. In exchange for these lands, the United States acquired the surface of the following described lands.

Salt Lake Meridian, Utah

T. 8 S., R. 2 W.,
Sec. 31, Lots 3 and 4.
T. 9 S., R. 2 W.,
Sec. 6, Lots 1, 2, 3, 4, 5, and S½NE¼, SE¼, SE¼SW¼.
T. 8 S., R. 3 W.,
Sec. 26, SW¼SE¼, E½SE¼SW¼;
Sec. 36, S½, NW¼.
Containing 1,099.53 acres.

3. At 7:45 a.m., on September 9, 1991, the lands described in paragraph 2 will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., on the date stated above, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. The purpose of this exchange was to acquire non-federal lands which have high public access, wildlife, and grazing values.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–18948 Filed 8–8–91; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–060–4212–14; W–81563]

Realty Action; Competitive Sale; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, competitive sale of public lands in Sheridan County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by competitive sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 Stat. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

T. 55 N., R. 77 W.,
Section 34, Lot 17

The above land aggregates 42.57 acres in Sheridan County, Wyoming. Appraised Value: $3,000.00.

FOR FURTHER INFORMATION CONTACT: David Pomerinke, Area Manager, Buffalo Resource Area, 189 North Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Buffalo Resource Area Management Plan. The purpose of this sale is to dispose of a small isolated tract of public land.

The parcel will be offered to the general public under the competitive sale procedures. Legal access to the parcel exists via Powder River County Road No. 269.

The publication of this notice segregates the public land described above from entry under the public land laws including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed, and shall be returned to the applicant if the notice segregates the land from the use applied for in the application. The segregative effect by this notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation notice is published, whichever comes first.

Sale Procedures include the following conditions:

(1) The sale will be conducted by competitive procedures. The parcel will be offered by sealed bid process to the general public.

(2) All bidders must be U.S. citizens, 18 years of age or older, corporation authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

(3) Sealed bidding is the only acceptable method of bidding. All bids must be received in the Buffalo Resource Area Office by 4 p.m. on October 23, 1991, at which time the sealed bid envelopes will be opened and the high bid announced. Bid envelopes must be marked on the left front corner with the parcel number (W–81563) and the sale date. The high bidder will be notified in writing within 30 days whether or not the BLM will accept the bid.

(4) Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashiers check made payable to the Department of Interior, BLM, for not less than 10 percent of the amount bid.

(5) Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two (2) or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

(6) If the parcel fails to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Buffalo Resource Area Office by 4:30 p.m. on the fourth (4th) Wednesday of each month begining November 27, 1991. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel changes, it will be published and the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the

authority of the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

3. The patent will be subject to all valid existing rights including telephone rights-of-way, W-90182, and the Powder River County Road No. 269.

For a period of forty-five (45) days from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, District Manager, Casper, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: August 2, 1991.

James W. Monroe,

District Manager.

[FR Doc. 91-18919 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-22-M

[UT-020-00-4212-08; U-65692]

Pony Express Resource Management Plan Proposed Planning Amendment; Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the proposed planning amendment for the Pony Express Resource Management Plan (RMP) to permit disposal of land in Tooele County, Utah.

SUMMARY: This notice of availability is to advise the public that the proposed planning amendments is available for public review. The RMP lands decision number one (1) did not provide for any disposal of land in the Callao area. The proposed amendment will allow for the disposal of 70 acres near Callao, Utah. These lands are described as follows:

Salt Lake Meridian, Utah

T. 10 S., R. 17 W.,
Sec. 26, SW¼SE¼;
Sec. 35, N½NW¼NE¼, N½S½NW¼;
containing 70 acres.

A 30-day protest period for the planning amendment will commence with publication of this notice of availability.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977-4300.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5-2. Protest must be received by the Director (WO-760) of the BLM, 18th and C Street NW., Washington, DC 20240, within 30 days after the date of publication of this notice of availability for the proposed planning amendment

Dated: August 2, 1991.

James M. Parker,

State Director.

[FR Doc. 91-18949 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-91-4212-22]

Filing of Plat of Survey; Nevada

July 29, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

EFFECTIVE DATE: Filing was effective at 10 a.m. on July 23, 1991.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6541.

SUPPLEMENTARY INFORMATION: The Plat of Survey of land described below was officially filed at the Nevada State Office, Reno, Nevada on July 23, 1991.

Mount Diablo Meridian, Nevada

T. 46 N., R. 53 E.—Dependent Resurvey and Survey.

The survey plat for T. 46 N., R. 53 E., was accepted July 15, 1991. The survey was executed to meet certain administrative needs of the U.S. Forest Service.

The above listed survey is now the basic record for describing the lands for all authorized purposes. The survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fee.

Robert Steele,

Deputy State Director, Operations.

[FR Doc. 91-18927 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-HC-M

[OR-942-00-4730-12; GP1-307]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 4 S., R. 7 W., accepted July 19, 1991 (Sheets 1 & 2)
T. 5 S., R. 7 W., accepted July 19, 1991
T. 16 S., R. 3 E., accepted July 19, 1991
T. 22 S., R. 10 E., accepted July 23, 1991
T. 23 S., R. 10 E., accepted July 23, 1991
T. 16 S., R. 17 E., accepted July 25, 1991 (Sheets 1 through 3)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of informaton only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 1, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-18920 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 27, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 26, 1991.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Oglethorpe County

Watson Mill Covered Bridge and Mill Historic District, Along S. Fork Broad R., Watson Mill State Park, Comer vicinity, 91001147

MISSOURI

Jackson County

Attucks School (18th and Vine Area of Kansas City MPS), 1815 Woodland Ave., Kansas City, 91001150

Paseo YMCA (18th and Vine Area of Kansas City MPS), Kansas City, 91001151

MONTANA

Ravalli County

First Baptist Church (Stevensville MPS), 402 Church, Stevensville, 91000737

NEW YORK

Niagara County

Van Horn Mansion, 2165 Lockport—Olcott Rd., Newfane vicinity, 91001149

Suffolk County

Caroline Church and Cemetery, Jct. of Dyke and Bates Rds., Brookhaven, 91001148

PENNSYLVANIA

Allegheny County

Highland Building, 121 S. Highland Mall, Pittsburgh, 91001123

Berks County

Dale Furnace and Forge Historic District (Iron and Steel Resources in Pennsylvania MPS), Forgedale Rd. NW of Bally, Washington Township, Bally vicinity, 91001134

Mary Ann Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Centennial Rd. SE of Longswamp, Longswamp Township, Longswamp vicinity, 91001141

Robesonia Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Furnace, S. Church and Freeman Sts. and Mountain and E. Meadow Aves., Robesonia, 91001128

Blair County

Allegheny Furnace (Iron and Steel Resources in Pennsylvania MPS), 3400 Crescent Rd., Altoona, 91001131

Etna Furnace (Boundary Increase and Decrease) (Iron and Steel Resources in Pennsylvania MPS), Roughly, area S and E of Frankstown Br. Juniata R. bend at Mt. Etna, Catherine Township, Mt. Etna, 91001145

Bucks County

Summers, Lewis, Farm, 60 Headquarters Rd., Tinicum Township, Ottsville, 91001124

Cambria County

Eliza Furnace (Iron and Steel Resources in Pennsylvania MPS), Lower Main St., Buffington and Blacklick Townships, Vintonville, 91001138

Chester County

Isabella Furnace (Iron and Steel Resources in Pennsylvania MPS), Bollinger Dr. just N of Creek Rd., Nantmeal Township, Brandywine Manor vicinity, 91001135

Middle Pickering Rural Historic District, Pikeland, Yellow Springs, Merlin, Church and Pickering Rds., Phoenixville, E. Pikeland and W. Pikeland Townships, Phoenixville vicinity, 91001125

Clarion County

Buchanan Furnace (Iron and Steel Resources in Pennsylvania MPS), Off PA 378 at Clarion R., Licking Township, Callensburg vicinity, 91001129

Clinton County

Farrandsville Iron Furnace (Iron and Steel Resources in Pennsylvania MPS), Jct. of Graham and Old Carrier Rds., Colebrook Township, Farrandsville, 91001137

Fayette County

Alliance Furnace (Iron and Steel Resources in Pennsylvania MPS), Off T 568 at Jacob's Cr., Perry Township, Perryopolis vicinity, 91001130

Mount Vernon Furnace (Iron and Steel Resources in Pennsylvania MPS), Entsey Rd. E of PA 982, Bullskin Township, Scottdale vicinity, 91001127

Wharton Furnace (Iron and Steel Resources in Pennsylvania MPS), Wharton Furnace—Hull Rd. S of US 40, Wharton Township, Hopwood vicinity, 91001143

Franklin County

Carrick Furnace (Iron and Steel Resources in Pennsylvania MPS), PA 75 N of Metal, Metal Township, Metal vicinity, 91001133

Franklin Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Roughly bounded by Circle Dr. and Cinder St., St. Thomas Township, Edenville vicinity, 91001136

Lackawanna County

Lackawanna Iron and Coal Company Furnace (Iron and Steel Resources in Pennsylvania MPS), 159 Cedar Ave., Scranton, 91001126

Lancaster County

Davies, Edward, House, S side of PA 23, W of Water St., Caernarvon Township, Churchtown, 91001122

Mount Hope Estate (Boundary Increase) (Iron and Steel Resources in Pennsylvania MPS), Roughly, along Shearer's Cr. E of Mansion House Rd. and N of PA Tpk., Penn and Rapho Townships, Mount Hope, 91001146

Schuylkill County

Swatara Furnace (Iron and Steel Resources in Pennsylvania MPS), Old Forge Rd. E of Lebanon Reservoir, Pine Grove Township, Suedberg vicinity, 91001140

Venango County

Rockland Furnace (Iron and Steel Resources in Pennsylvania MPS), On Shull Run N of the Allegheny R., NW of Emlenton, Emlenton vicinity, 91001139

Westmoreland County

Ross Furnace (Iron and Steel Resources in Pennsylvania MPS), SW of Tubmill Reservoir off PA 711, Fairfield Township, West Fairfield vicinity, 91001142

York County

Codorus Forge and Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Jct. of River Farm and Furnace Rds., Hellam Township, Saginaw vicinity, 91001132

[FR Doc. 91–18997 Filed 8–8–91; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

All-American Canal Lining Project, Imperial County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearing for the draft environmental impact statement/draft environmental impact report (DEIS/DEIR): INT DES–91–18.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, Reclamation and the Imperial Irrigation District have issued a joint DEIS/DEIR on a proposed project to line a section of the All-American Canal between Pilot Knob and Drop 4. The document evaluates alternatives to line the All-American Canal to conserve water. Public hearings on the DEIS/DEIR have been scheduled to solicit public comment on the contents of the environmental document.

DATES: The hearings will be held at the times, locations, and addresses listed below:

- Wednesday, September 11, 1991, 6:30 p.m., U.S. Bureau of Reclamation, Yuma Projects Office Auditorium, 7301 Calle Agua Salada, Yuma, Arizona.

• Thursday, September 12, 1991, 1 p.m., Imperial Irrigation District Auditorium, 1284 Main Street, El Centro California.

ADDRESSES: Single copies of the DEIR/DEIS may be obtained on request to the Regional Director at the address below:

• Regional Director (Attention: LC–150

• Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone (702) 293–8510.

Copies of the DEIS/DEIR are available for public inspection and review at the following locations:

• Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street NW., room 7456, Washington, DC 20240, telephone: (202) 208–4662.

• Bureau of Reclamation, Denver Office Library, Building 67, Denver Federal Center, 6th and Kipling, Denver, CO 80225, telephone: (303) 236–6963.

• Bureau of Reclamation, Yuma Projects Office, 7301 Calle Agua Salada, Yuma, AZ 85366, telephone: (602) 343–8100.

• Imperial Irrigation District, 333 East Barioni Boulevard, Imperial, CA 92251.

Metrpolitan Water District of Southern California, 1111 Sunset Boulevard, Los Angeles, CA 90012.

• Coachella Valley Water District, Corner of Highway 111 and Avenue 52, Coachella, CA 92236.

Public Libraries

Located in El Centro, Imperial, Coachella, San Diego, Brawley, Holtville, Calexico, and Los Angeles (Main Library), California; and Yuma, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Martin P. Einert, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8510; Public Information Office, Imperial Irrigation District, P.O. Box 937, Imperial, CA 92251, telephone: (619) 339–9426.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the hearing should contact the Bureau of Reclamation, Lower Colorado Regional Office, at the above address, to announce their intention to participate. Requests for scheduled presentations will be accepted through 10 a.m. on August 23, 1991.

Oral comments at the hearing will be limited to 5 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the schedule order, and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those who wish to supplement their oral presentations at the hearing should be received by Reclamation's Lower Colorado Regional Office at the above address by September 20, 1991.

Dated: July 30, 1991.

Margaret W. Sibley,

Assistant Commissioner—Administration.

[FR Doc. 91–18929 Filed 8–8–91; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub No. 334X)]

Burlington Northern Railroad Co.; Exemption, Abandonment Between Estelline and Plainview, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Burlington Northern Railroad Company of 82.95 miles of rail line between Estelline and Plainview, TX, subject to standard labor protective conditions, a historic resources condition, and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 8, 1991. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] and requests for a public use condition must be filed by August 19, 1991. Petitions to stay must be filed by August 26, 1991, and petitions for reconsideration must be filed by September 3, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 334X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Petitioner's Representatives: Douglas J. Babb, Michael E. Roper, Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202)–275–7245. [TDD for hearing impaired: (202)–275–1721).]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: August 2, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Vice Chairman Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18976 Filed 8–8–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 377X)]

CSX Transportation, Inc.; Abandonment Exemption in Thomas County, GA, and Jefferson County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 11.85 miles of rail line between milepost AND–703.0, at Metcalf, GA, and milepost AND–714.85, at Monticello, FL, subject to the following conditions: (1) Standard labor protection; (2) environmental; and (3) limited public use.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 8, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 19, 1991, petitions to stay must be filed by August 26, 1991 and petitions for reconsideration must be filed by September 3, 1991. Requests for broader public use conditions must be filed by August 19, 1991.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 377X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Charles M. Rosenberger—J150, CSX Transportaion Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 [TDD for hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: July 30, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18977 Filed 8–8–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Immigration Nursing Relief Advisory Committee; Appointment of Members

This is to announce the appointment of members to the Immigration Nursing Relief Advisory Committee, established under Public Law 101–238, Immigration Nursing Relief Act of 1989.

The membership of the Committee and the organizations represented are as follows: Lenore Appenzeller, National League for Nursing; Don C. Bedell, American Health Care Association; Debra R. Bowland, U.S. Department of Labor; Alan H. Channing, American Hospital Association; Barbara Faruggio, Voluntary Hospitals of America Inc.; Rex J. Ford, U.S. Department of Justice; Pat Ford-Roegner, Service Employees International Union; Evelynn C. Gioiella, American Association of Colleges of Nursing; Jack Golodner, Department for Professional Employees, AFL–CIO; O. Marie Henry, U.S. Department of Health and Human Services; Sara J. Keele, American Organization of Nurse Executives; Filipinas Juan Lowery, Philippine Nurses Association of America; Virginia M. Maroun, Commission on Graduates of Foreign Nursing Schools; Doris E. Nay, National Council of State Boards of Nursing Inc.; Barbara Nichols, American Nurses Association; Marilyn E. Rollins, National Advisory Council for the National Health Services Corps; Edwin R. Rubin, American Immigration Lawyers Association; and Sharon M. Weinstein, National Federation for Specialty Nursing Organizations.

The members will serve until January 30, 1993. Evelynn C. Gioiella will serve as Committee Chairperson.

Signed at Washington, DC this 5th day of August 1991.

Debra R. Bowland,

Acting Assistant, Secretary for Policy.

[FR Doc. 91–18984 Filed 8–8–91; 8:45 am]

BILLING CODE 4510–23–M

Immigration Nursing Relief Advisory Committee; Open Meeting

SUMMARY: The Secretary's Immigration Nursing Relief Advisory Committee (INRAC) was established in accordance with Public Law 101–238, Immigration Nursing Relief Act of 1989, on January 30, 1991. The Committee is to advise the Secretary on the effectiveness of the Immigration Nursing Relief Act of 1989 (INRA) and on needed changes to that legislation. The Committee will be charged with assessing: The impact of the INRA on the nursing shortage; programs that medical institutions implement to recruit and retain nurses who are U.S. citizens, or immigrants authorized to perform nursing services; the formulation of State recruitment and retention plans under the INRA; and the advisability of extending the provisions of INRA beyond the 5-year period specified in the Act.

TIME AND PLACE: The first meeting will be held September 13, 1991 from 10 a.m. until 4:30 p.m. at the Washington Vista Hotel, 1400 M Street NW., Washington, DC.

AGENDA: The agenda provides for:

1. Introductions and Welcome.
2. Background Presentations.
3. INRAC Goals, and Strategies to be employed to meet them.
4. Organizational Matters.

PUBLIC PARTICIPATION: The meeting will be open to the public. The last thirty minutes will be set aside for public comment. Seating will be available for the public on a first-come, first-serve basis.

Individuals or organizations wishing to submit written statements should send 10 copies to Mrs. Karlyn Davis, Executive Director, Immigration Nursing Relief Advisory Committee—Room S–2114, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before September 2, 1991 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Mrs. Karlyn Davis, Exec. Dir., INRAC—room S–2114, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–6026.

Signed at Washington, DC this 5th day of August, 1991.

Debra R. Bowland,

Acting Assistant, Secretary for Policy.

[FR Doc. 91–18983 Filed 8–8–91; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 1991.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Airpax (Wkrs)	Frederick, MD	07/29/91	07/15/91	26,119	Relays and Solenoids.
Ann Will Garment ILGWU	Kingston, PA	07/29/91	07/16/91	26,120	Women's Dresses.
Ansell, Inc (CO)	Tucson, AZ	06/29/91	07/28/91	26,121	Latex Examination Gloves.
Church and Co. (CO)	Bloomfield, NJ	07/29/91	07/12/91	26,122	Precious Metal Jewelry.
Diamond M On Shore, Inc. (Wkrs)	Alice, TX	07/29/91	06/26/91	26,123	Oil Drilling.
Duramic Products, Inc (Wkrs)	Palisades Park, NJ	07/29/91	07/16/91	26,124	Ceramic Fixtures, Safety Tools.
Electrosound Group Midwest (CO)	Shelbyville, IN	07/29/91	07/15/91	26,125	Tapes & LP Records.
Erico Fastening Systems (IUE)	Morrestown, NJ	07/29/91	07/18/91	26,126	Construction Equipment.
Fay Swafford Originals (Wkrs)	Cleveland, TN	06/29/91	07/15/91	26,127	Knitwear Apparel, Handbags.
Frontier Transports, Inc (Wkrs)	Wilson, OK	07/29/91	07/16/91	26,128	Oil Drilling.
High Country Ford, Inc (Wkrs)	Newland, NC	07/29/91	07/16/91	26,129	Ford Dealership.
Kenner Products Div. (CO)	Cincinnati, OH	07/29/91	07/17/91	26,130	Toys and Games.
Mercury Knitting Mills (Wkrs)	Brooklyn, NY	07/29/91	07/12/91	26,131	Ladies Sweaters.
Omega Tube & Conduit, Corp (CO)	Little Rock, AR	07/29/91	07/19/91	26,132	Steel Mechanical Tubing.
Parker Brothers Div. (CO)	Beverly, MA	07/29/91	07/17/91	26,133	Toys and Games.
Parker Brothers Div. (CO)	Salem, MA	07/29/91	07/17/91	26,134	Toys and Games.
PEP Drilling Co. (CO)	Mt. Vernon, IL	07/29/91	07/18/91	26,135	Home Office.
PEP Drilling Co. (CO)	Carrollton, OH	07/29/91	07/18/91	26,136	Oil Drilling.
PPG Industries, Inc, Works #7 AB&GWU	Cumberland, MD	07/29/91	07/18/91	26,137	Glass.
Rawlings Sporting Goods Co, Plt 7 ACTWU	Licking, MO	07/29/91	07/05/91	26,138	Sporting Goods.
Red Tiger Dilling Co. (Wkrs)	Wichita, KS	07/29/91	07/10/91	26,139	Oil Drilling.
Rome Turney Radiator Co (Wkrs)	Rome, NY	07/29/91	07/16/91	26,140	Heat Exchangers.
Semon Bache & Co. GWW&PH	Brooklyn, NY	07/29/91	07/16/91	26,141	Plate Glass and mirrors.
Sinclair Radio Laboratories, Inc (Wkrs)	Tonawanda, NY	07/29/91	07/07/91	26,142	Communication Equipment.
Tonka Crop. (CO)	St. Louis Park, MN	07/29/91	07/17/91	26,143	Toys.
Tonka Products Div. (CO)	St. Louis Park, MN	07/29/91	07/17/91	26,144	Toys and Games.
Tonka Products Div. (CO)	El Paso, TX	07/29/91	07/17/91	26,145	Toys and Games.
Vernell's Fine Candies BC&TW	Bellevue, WA	07/29/91	07/19/91	26,146	Candy.

[FR Doc. 91-18985 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,938]

Liberty Machine Co., Inc., Paterson, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 17, 1991 in response to a worker petition which was filed on June 17, 1991 on behalf of workers at Liberty Machine Co., Inc., Paterson, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of August, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18980 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,759]

Unibar Drilling Fluids, Inc., Rocky Mountain Division, Denver, CO; Revised Determination on Reconsideration

On July 23, 1991, the Department, issued an Affirmative Determination Regarding Application for Reconsideration for workers of the Rocky Mountain Division of Unibar Drilling Fluids, Inc., Denver, Colorado. The notice will soon be published in the **Federal Register.**

The initial investigation resulted in a negative determination on June 20, 1991. In that determination the Department considered the subject firm as a manufacturer of drilling muds. U.S. imports of drilling muds are negligible.

New findings, on reconsideration, show that the Rocky Mountain does not produce drilling muds but customizes the drilling muds at each drilling site for unaffiliated firms in the oil and gas industry. The workers apply the muds and remain at the drilling site until the drilling phase is complete.

Other findings show decreased revenues in the first 6 months of 1991 compared to the same period in 1990. Average employment decreased in the first six months of 1991 compared to the same period in 1990.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in 1989 compared to 1988 and in the first 10 months of 1990 compared to the same period in 1989.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil contributed importantly to the decline in sales and to the total or partial separation of workers at the Rocky Mountain Division of Unibar Drilling Fluids, Denver, Colorado. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the Rocky Mountain Division of Unibar Drilling Fluids, Inc., Denver, Colorado who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of July, 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-18981 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-80-M

[TA-W-25,789]

VTC Inc., Subsidiary of Control Data Corp.; Bloomington, MN; Negative Determination Regarding Application for Reconsideration

By an application dated July 18, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 25, 1991 and published in the Federal Register on July 11, 1991 (56 FR 31678).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers were engaged in the assembly and packaging of semiconductor devices mainly for classified projects for its parent company—Control Data Corporation.

The petitioner claims that the major portion of the assembly work performed at VTC was non-classified and that the workers were adversely affected by imports.

The Department's denial was based on the fact that employment and production declines at the subject plant were the result of the sale of the business to other domestic companies.

Investigation findings show that Control Data disposed of VTC in three pieces—by selling VTC Bipolar in October 1990 and VTC Cmos in January 1991 and retaining only a small assembly and packaging operation for classified projects for Control Data. Other investigation findings show that since the last quarter of 1989, the vast majority of the assembly and packaging work was for classified projects which for national security reasons could only be assembled in the United States. Workers in the remaining small packaging unit were laid off in May 1991 because their customer chose not to remain in the classified semiconductor business.

None of the above findings would form a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 31st day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-18982 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-80-M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

The Employment and Training Administration has established a voice-mail service for the H-1A nurse attestation process. Call Telephone Number: 202-535-0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H-1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other

persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 1st day of August, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations

[07/01/91 to 07/31/91]

CEO-name/facility name/address	State	Approval date
Mr. W. Perry Kinder, Doctors Hospital, HCA Health Service, Inc., Little Rock, AR 72205, 501-661-4000	AR	07/09/91
Mr. Terry Granger, Life Care Center of Paradise, 4065 E. Bell Rd., Phoenix, AZ 85032, 602-867-0212	AZ	07/18/91
Mr. Charles R. Brackney, Lutheran Helathcare Network, 6644 Baywood Ave., Mesa, AZ 85206, 602-981-4131	AZ	07/26/91
Sandra Rodiles, Desert Valley Dialysis Center, 100 South Fifth Street, El Centro, CA 92243, 619-353-0353	CA	07/03/91
Ms. Sheila Elaine Miller, Mission Hospital, 3111 E. Florence Avenue, Huntington Park, CA 90255, 213-582-8261	CA	07/09/91
Ms. Judy Williams, International Nurses Who Care, 1747 Brown Avenue, Woodland, CA 95695, 916-661-1493	CA	07/09/91
Mr. Stephen Reissman, Country Villa Ser. Corp., Villa del Sol, Los Angeles, CA 90033, 213-265-5034	CA	07/09/91
Mr. Ephraim Barsam, Nursing Management Services, (USA), Inc., Los Angeles, CA 90067, 213-553-6024	CA	07/15/91
Mr. Lenard Heffner, St. Helena Hospital & Health, P.O. Box 250, Dee Park, CA 94576, 707-963-3611	CA	07/17/91
Mr. John M. Wilson, San Pedro Peninsula Hospital, 1300 West Seventh Street, San Pedro, CA 90732, 213-514-5203	CA	07/18/91
Sister Regina Clare Salazar, Daniel Freeman Memorial Hosp., 333 North Prairie Avenue, Inglewood, CA 90306, 213-674-7050	CA	07/18/91
Mer. Ermanno Mariani, Pacifica Hosp. of the Valley, Sun Valley Health Group, Inc., Sun Valley, CA 91352, 818-767-3310	CA	07/23/91
Mr. Victor M. Marefka, South Bay Nursing Center, Southern Care Corp., Long Beach, CA 90804, 213-498-7790	CA	07/23/91
Mr. David Banks, Sherman Oaks Conval. Hosp., Beverly Enterprises, Sherman Oaks, CA 91403, 818-986-7242	CA	07/23/91
Mr. Robert D. Hansen, Community Hospital of Chula Vista, 751 Medical Center, Chula Vista, CA 91911, 619-421-6110	CA	07/25/91
Mr. Donald Berstein, Granada Hills Community Hosp., 10445 Baboa Blvd., Granada Hills, CA 91344, 818-360-1021	CA	07/25/91
Mr. Keith N. Wolfe, Community Hosp. of Huntington, 2623 East Slauson Avenue, Huntington Park, CA 90255, 213-582-1931	CA	07/25/91
Mr. Michael E. Schrader, Bridgeport Hospital, 267 Grant Street, Bridgeport, Connecticut 06610, 203-384-3005	CT	07/18/91
Ms. Constance U. Battle, The Hospital for Sick Children, 1731 Bunker Hill Road, NE., Washington, DC 20017, 202-832-4400	DC	07/03/91
Ms. Elizabeth A. Abramowitz, PSI Associates, Inc. 1000 Vermont Avenue, NW., Washington, DC, 202-842-2790	DC	07/09/91
Mr. A. Jason Geisinger, Hillhaven Healthcare Center, 950 Mellonville, Avenue, Sanford, IL 32771, 407-322-8566	FL	07/03/91
Ms. Cynthia Y. Palermo, South Dade Catholic Nursing Home, Inc., Miami, FL 33177, 305-252-4000	FL	07/03/91
Mr. A. Jason Geisinger, Town and Country Conval. Ctr., First Health care Corp., d.b.a., Tampa FL 33615, 813-885-6053	FL	07/08/91
Mr. Richard Castillo, Plantation Gen'l. Hosp., 401 N.W. 42nd Ave., Plantation, FL 33317, 305-797-6450	FL	07/09/91
Mr. A. Jason Geisinger, Titusville Nur. Conval. Ctr., First Healthcare Corp., d.b.a., Titusville, FL 32796, 407-269-5720	FL	07/18/91
Mr. Wayne Deschambeau, Riverside Hospital, RHPC Inc. d/b/a, New Port Richey, FL 34652, 813-842-8468	FL	07/18/91
Mr. A. Jason Geisinger, East Manor Medical Care Center, First Healthcare Corp., d.b.a., Sarasota, FL 34239, 813-365-2422	FL	07/18/91
Mr. A. Jason Geisinger, Orlando Memorial Conval. Center, First Healthcare Corp., d.b.a., Orlando, FL 32806, 407-423-1612	FL	07/18/91
Mr. William J. Byron, Good Samaritan Hospital, Flagler Drive at Palm Beach Lakes Blvd., West Palm Beach, FL 33402, 407-655-5511	FL	07/23/91
Mr. A. Jason Geisinger, Menorah House-Hillhaven, First Healthcare Corp., d.b.a., Boca Raton, FL 33428, 407-483-0498	FL	07/25/91
Mr. Lionel N. Jadoo, Dania Nursing Home, Inc., 4400 Phippen Road, Dania, FL 33004, 305-927-0508	FL	07/26/91
Mr. R. Edward Howell, Medical College of Ga. Hosp., 1120 15th Street, BIF 206, 30912, 404-721-3921	GA	07/18/91
Mr. A. Jason Geisinger, Savannah Convalscent Center, First Healthcare Corp., d.b.a., Savannah, GA 31405, 912-352-8615	GA	07/23/91
Mr. A. Jason Geisinger, Hillhaven Rehab. & Conval., First Healthcare Corp., d.b.a., Marietta, GA 30060, 404-422-6913	GA	07/23/91
Mr. A. Jason Geisinger, Hillhaven Convalescent Center, First Healthcare Corp., d.b.a., Savannah, GA 31499, 912-925-4402	GA	07/23/91
Mr. Patrick J. Duarte, Rehabilitation Hosp. of the P, 226 N. Kuakini Street, Wahiawa, HI 96786, 808-531-3511	HI	07/09/91
Mr. David L. Hill, Wahiawa General Hospital, 128 Lehua Street, Wahiawa, HI 96786, 808-621-8411	HI	07/18/91
Mr. Sam Gorenstein, Metro. Nursing Center of Elgin, 50 N. Jane Drive, Elgin, Illinois, 60123, 708-697-3750	IL	07/03/91
Mr. Sam Gorenstein, Edgewater Nursing & Geriatric, 5838 N. Sheridan Road, Chicago, Illinois 60660, 312-769-2230	IL	07/03/91
Mr. Sam Gorenstein, Metro. Nursing Center of Oak, 625 N. Harlem Avenue, Oak Park, Illinois 60302, 708-848-5966	IL	07/03/91
Mr. Sam Gorenstein, Chicago Ridge Nursing Center, 10602 Southwest Highway, Chicago, Illinois 60415, 708-448-1540	IL	07/03/91
Mr. Sidney Glenner, Glen Oaks Nursing Center, 270 Skokie Blvd., Northbrook, IL 60062, 708-498-9320	IL	07/09/91
Mr. Leslie Zun, Loretto Hospital, 645 S. Central Avenue, Chicago, IL 60644, 312-626-4300	IL	07/09/91
Mr. Sidney Glenner, GlenCrest Nursing and Rehab., 2451 W. Touhy, Chicago, IL 60646, 312-338-6800	IL	07/09/91
Mr. Sidney Glenner, Elston Nursing Home, 4340 N. Keystone, Chicago, IL 60641, 312-545-8700	IL	07/09/91
Ms. Flora Steinberg/Shirley Holt, York Convalescent Center, 127 W. Diversey, Elmhurst, IL 60126, 708-530-5225	IL	07/18/91
Ms. Joanne T. Jurkovic, Mercy Health Care & Rehab. Ct., 19000 South Halsted Street, Homewood, IL 60430, 708-957-9200	IL	07/18/91
Mr. John Samatas, Omni Health Care Ctr., Inc., D, Lexington Health Care Ctr. Schaumburg, Lombard, IL 60148, 708-495-1700	IL	07/18/91
Mr. John Samatas, Lexington Health Care Ctr. of Bloomingdale, Inc., Lombard, IL 60148, 708-495-1700	IL	07/18/91
Mr. John Samatas, Lexington Health Care Ctr., I, 1300 S. Main, Lombard, IL 60148, 708-495-1700	IL	07/18/91
Mr. John Harper, South Shore Hospital, 8012 S. Crandon, Ave., Chicago, IL 60617, 312-768-0810	IL	07/23/91
Sam Gorenstein, Metropolitan Nursing Ctr. of, 222 N. Hammes, Joliet, IL 60435, 812-725-0443	IL	07/23/91
Ms. Theresa Okun, Wheaton Convalescent Center, 1325 Manchester Road, Wheaton, IL 60187, 708-668-2500	IL	07/25/91
Mr. Frank Klienerman, Lake Shore Nursing Center, Inc., 7200 N. Sheridan Road, Chicago, IL 60626, 312-973-7200	IL	07/25/91
Mr. John Birdzell, St. Mary Medical Center (Hoba), Lakeshore Health System, Hobart, IN 46342, 219-947-6140	IN	07/18/91
Ms. Bain J. Farris, St. Vincent Hosp. & Health Care, 2001 West 86th Street, Indianapolis, IN 46260, 317-870-8166	IN	07/25/91
Mr. William H. Kelleher, Dept. of Veterans Affairs Med., 940 Belmont Street, Brockton, MA 02401, 508-583-4500	MA	07/18/91
Mr. Ronald R. Peterson, The Francis Scott Key Med. Ctr., 4940 Eastern Avenue, Baltimore, MD 21224, 301-550-0100	MD	07/03/91
Mr. Brian Goodell, MD, Swedish Hospital Medical Center, 747 Summit Ave., Seattle, Washington 98104, 206-386-2141	MD	07/03/91
Mr. L. Barney Johnson, Harbor Hospital Center, 3001 S. Hanover Street, Baltimore, MD 21230, 301-347-3201	MD	07/18/91
Mr. Salvatore D. Benisatio, Qualicare Nursing Home, 695 E. Grant Blvd., Detroit, MI 48207	MI	07/03/91
Mr. Salvatore D. Benisatto, Westwood Nursing Center, 16588 Schaefer, Detroit, MI 48235, 313-345-5000	MI	07/03/91
Mr. Salvatore D. Benisatto, LaVille Nursing Home, 660 E. Grand Blvd., Detroit, MI 48207, 313-923-5800	MI	07/03/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[07/01/91 to 07/31/91]

CEO-name/facility name/address	State	Approval date
Mr. Salvatore D. Benisatto, Eastwood Nursing Center, 626 E. Grand Blvd. Detroit, MI 48207, 313-923-5816	MI	07/03/91
Mr. Kenneth J. Matzick, William Beaumont Hosp.—Roya, 3601 West Thirteen Mile Road, Royal Oak, MI 48073, 313-637-6914	MI	07/18/91
Mr. Salvatore D. Benisatto, Alpha Manor Nursing Home, 440 E. Grand Blvd. Detroit, MI 48207, 313-579-2900	MI	07/18/91
Mr. Reynold Banks, Capitol View Care Center, 707 Armstrong, Lansing, MI 48911, 517-393-5680	MI	07/25/91
Mr. Jerry Jurena, Trinity Hospital, 315 Knapp Street, Wolf Point, MT 59201, 406-653-2100	MT	07/25/91
Mr. Larry Bishop, Union Memorial Hosp., 600 Hospital Dr., Monroe, NC 28111, 704-283-3100	NC	07/23/91
Mr. D. Max Francis, Bishop Clarkson Memorial Hosp., 44th & Dewey Ave., Omaha, NE 68105, 402-552-2000	NE	07/09/91
Mr. John Matuska, St. Peter's Medical Center, 254 Easton Ave., New Brunswick, NJ 08903, 906-745-8600	NJ	07/03/91
Ms. Linda DiNolfo, Hudson View Care & Rehab. Ctr., 9020 Wall Street, North Bergen, NJ, 07047, 201-861-4040	NJ	07/03/91
Mr. Joseph Jordano, Harborview Health Care Facility, 178-198 Ogden Ave., Jersey City, NJ 07307, 201-963-1800	NJ	07/09/91
Mr. Lloyd Currier, Christ Hospital, 176 Palisade Avenue, Jersey City, NJ 07306, 201-795-8355	NJ	07/11/91
Mr. Bernard Dickens, Sr., United Hospitals Med. Ctr., 15 South Ninth Street, Newark, NJ 07107, 201-268-8576	NJ	07/18/91
Mr. Alex De Venecia, Lifeline International, NJ Co., 309 Bldwin Avenue, Jersey City, NJ 07306, 201-420-6331	NJ	07/19/91
Mr. Oscar Heller, Bayview Conval. Center, Lake Boulevard, Bayville, NJ 08721, 908-269-0500	NJ	07/23/91
Mr. Berel Tennenbaum, Perth Amboy Nursing Home, 303 Elm Street, Perth Amboy, NJ 08861, 908-442-9540	NJ	07/25/91
Mr. Marc H. Lory, UMDNJ—University Hosp., 150 Bergen Street, Newark, NJ 07103, 201-456-5658	NJ	07/25/91
Mr. Thomas Schember, St. Francis Hospital, Franciscan Health System of NJ, Inc., Jersey City, NJ 07302, 201-714-8900	NJ	07/25/91
Mr. R. Gordon Taylor, Lea Regional Hospital, 5419 Lovington Highway, Hobbs, NM 88240, 505-392-6581	NM	07/25/91
Mr. Alan Kopman, Westchester Square Med. Ctr., 2475 St. Raymond Ave., Bronx, NY 10461, 212-430-7300	NY	07/02/91
Ms. Marily Baader, Crouse Irving Memorial Hosp., 736 Irving Avenue, Syracuse, NY 13210, 315-470-7521	NY	07/12/91
Mr. Don A. Corey, Niagara Falls Memorial Med. Ctr., 621—10th Street, Niagara Falls, NY 14302, 716-278-4340	NY	07/25/91
Ms. Deborah D. Dobson, HCR DBA Oakmont West Nur. Ctr., 600 Sulphur Springs Rd., Greenville, SC 29611, 803-246-2721	SC	07/03/91
Mr. Bruce W. Reinhardt, Coronado Hospital, One Medical Plaza, Pampa, TX 79065, 806-665-3721	TX	07/03/91
Mr. Williams Burns, HCA Rio Grande Regional Hosp., 101 East Ridge Road, McAllen, TX 78503, 512-632-6000	TX	07/09/91
Mr. Steve Jackson, Southwest Gen'l Hosp. 7400 Barlite Blvd., San Antonio, TX 78224, 512-921-2000	TX	07/18/91
Mr. Wiliam R. Blanchard, DeTar Hospital, 501 East San Antonio, Victoria, TX 77901, 512-575-7441	TX	07/18/91
Mr. William E. Ball, Outreach Health Ser. of San Antonio, 1111 Babcock Road, San Antonio, TX 78201, 512-736-2863	TX	07/23/91
Ms. Bridgete Martin, Trinity Nursing Services, Inc., 507 North Belt East, suite 450, Houston, TX 77060, 713-931-4960	TX	07/23/91
Mr. William E. Ball, BWB Sunbelt Home Health Agency, 1711 Montana Avenue, El Paso, TX 79902, 915-532-5942	TX	07/23/91
Mr. Charles Van Vorst, Santa Rosa Health Care Corp., 519 W. Houston Street, San Antonio, TX 78207, 512-228-2011	TX	07/23/91
Mr. David J. Holly, Southeast Texas Rehab. Hosp., 3340 Plaza 10 Blvd., Beaumont, TX 77707, 409-835-0835	TX	07/23/91
Sister Getchen Kunz, St. Joseph Hosp. & Health Ctr., 2801 Franciscan Drive, Bryan, TX 77802, 409-776-2515	TX	07/25/91
Total Attestations—95		

[FR Doc. 91-18979 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor,

Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia, DC91-1 (Feb. 22, 1991). p. 79, pp. 80-90.
Massachusetts:
MA91-1 (Feb. 22, 1991)..... p. 421, pp. 423, 425, 426.
MA91-3 (Feb. 22, 1991)..... p. 453, pp. 454-455.
New York:
NY91-8 (Feb. 22, 1991)..... p. 857, pp. 858-868.
NY91-12 (Feb. 22, 1991).... p. 893, pp. 893-900.
Rhode Island, RI91-1 (Feb. 22, 1991). p. 1149, pp. 1150-1152.
West Virginia, WV91-2 (Feb. 22, 1991). p. 1421, pp. 1422-1444b.

Volume II

Minnesota, MN91-7 (Feb. 22, 1991). p. 587, pp. 587-606b.
New Mexico, NM91-1 (Feb. 22, 1991). p. 779, p. 780.
Texas, TX91-17 (Feb. 22, 1991). p. 1061, p. 1062.
Wisconsin:
WI91-7 (Feb. 22, 1991)..... p. 1221.
WI91-11 (Feb. 22, 1991).... p. 1259.
WI91-13 (Feb. 22, 1991).... p. 1267.
WI91-14 (Feb. 22, 1991).... p. 1271.

Volume III

Idaho, ID91-5 (Feb. 22, 1991). p. 229, p. 230.
Washington:
WA91-1 (Feb. 22, 1991)..... p. 451, pp. 457-458, 472.
WA91-2 (Feb. 22, 1991)..... p. 477, pp. 478-480.
WA91-3 (Feb. 22, 1991)..... p. 487, p. 488.
WA91-6 (Feb. 22, 1991)..... p. 499, p. 500.
WA91-7 (Feb. 22, 1991)..... p. 501.

Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 2nd day of August 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-18763 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Design Arts Challenge III section) to the National Council on the Arts will be held on August 27, 1991 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-10 a.m. and 4:30 p.m.-5:30 p.m. The topics will be welcoming remarks, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 6, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18994 Filed 8-8-91; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-arts Advisory Panel (Presenting Organizations "B" Section) to the National Council on the Arts will be held on August 27, 1991 from 9 a.m.-7 p.m., August 28-29 from 9 a.m.-8 p.m. and August 30 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 30 from 2 p.m.-5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on August 27 from 9 a.m.-7 p.m., August 28-29 from 9 a.m.-8 p.m. and August 30 from 9 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the

public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 6, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–18995 Filed 8–8–91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Exemption

In the Matter of Indiana Michigan Power Co. (Donald C. Cook Nuclear Plant Units 1 and 2).

I

The Indiana Michigan Power Company, (the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74, which authorizes operation of the Donald C. Cook Nuclear Plants at steady-state power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

General Design Criterion (GDC) 2 of appendix A to 10 CFR part 50 requires that structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami and seiches without loss of capability to perform their safety functions. The design bases for these structures, systems, and components shall reflect: (1) Appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and the surrounding area, with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated; (2) appropriate combinations of the effects of normal and accident conditions with the effects of the natural phenomena; and (3) the importance of the safety functions to be performed.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

III

By letter dated July 19, 1991, the licensee requested an exemption from the requirements of GDC 2 of appendix A to 10 CFR part 50 for the emergency diesel generator (EDG) combination air intake piping including silencer and intake filters, the EDG exhaust piping including silencer, and the EDG room ventilation supply ductwork to be able to withstand the effects of a tornado. The licensee requested that this exemption remain in effect until August 17, 1991, to allow time to implement plant modifications designed to strengthen the tornado resistance of the affected components and bring the affected components into compliance with GDC 2.

The licensee first identified a concern with the ability of the affected components to withstand the effects of a tornado during conduct of a licensee electrical distribution system functional inspection (EDSFI) readiness review. Questions arose as to the existence of proper documentation to support diesel generator operation during a tornado.

The specific items in question are the ventilation ductwork which supplies cooling air to the rooms in which the diesel generators are located, the intake silencer for the diesel generator combustion air, and the diesel generator exhaust piping.

In the highly unlikely event that a tornado passes over the Cook Nuclear Plant, the intake ductwork supplying the diesel generator room ventilation may be subjected to an unacceptable decrease in internal pressure. If the ventilation system is not running at the time the tornado passes, a damper in the line would be closed, effectively isolating the internal area of the ducting from the diesel generator room. Because the ducting passes through the diesel generator room and the room would not be vented, a differential pressure would be imposed across the ducting upsteam of the damper.

The licensee was unable to locate documentation which demonstrates the ability of the ductwork to survive the differential pressure associated with this tornado condition. Their preliminary assessment concluded that duct collapse may be possible. A similar concern exists for the diesel generator combustion air intake silencer located inside the diesel generator room.

Additionally, the supply and exhaust piping have components which are located outside of the buiiing. These components, exhaust silencer, intake filters, and piping could be exposed to high wind forces. The licensee has been unable to locate documentation which demonstrates the ability of these components to withstand the forces associated with the wind loadings.

IV

The buildings and structures housing safety-related equipment at the D.C. Cook Nuclear Plant were designed to withstand the effects of a tornado. The EDG exhaust silencer, combustion air intake, and ventilation intake components are located such that structures provide a measure of shielding from tornado effects. Further, the licensee has implemented compensatory actions to alleviate the concerns associated with vacuum-induced pressure differential across the ventilation ductwork and the combustion air intake silencer. These including running the EDG room ventilation fans continuously. This opens the damper which provides a path for pressure equalization. Also, doors to the diesel generator rooms and doors

and manways in other compartments through which the ventilation ductwork passes have been opened (and appropriate fire watches stationed as necessary) to allow for a vent path and reduce the potential for a pressure differential to exist. Other compensatory actions (modifications to external components) are underway and include using cables to provide additional support and removal of a portion of the ventilation intake which protrudes outside the building. These modifications will address the tornado wind loading concerns and are to be completed no later than August 17, 1991, and will include development of adequate procedures for installation.

Using preliminary results from their probabilistic risk assessment, the licensee calculated that tornadoes resulting in 90 mph or greater winds occur with a frequency of 2×10^{-4} per year within a 125-mile radius of the D.C. Cook Nuclear Plant. Further, the majority of tornadoes within a 125-mile radius of the plant occur in the months of April, May, and June. When considering whether a tornado of 90 mph or greater winds would occur and cause both a loss of off-site power and loss of the EDGs, the probability is even lower.

V

The staff has reviewed the information supplied by the licensee and has had numerous discussions with the licensee concerning the circumstances of the event, their operability determination, and their compensatory and corrective actions. The licensee has determined that these actions would bring the EDGs into compliance with GDC 2 and would be fully implemented no later than August 17, 1991. The staff agrees with the licensee that the actions they have described will adequately enhance the ability of the affected components to withstand the effects of a tornado. Additionally, the staff concurs with the licensee's determination that the occurrence of a tornado during the short duration that this exemption will be in effect is a low probability event. The staff notes also that upon discovery of the nonconforming condition, the licensee made a good faith effort to comply with the regulations through immediate implementation of compensatory actions.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a) that (1) this exemption as described in section III is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security, and (2) special circumstances as provided in 10 CFR 50.12(a)(2)(v) are present for this exemption in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants the Exemption request identified in section III above. The Exemption shall remain in effect until August 17, 1991, or until such time as the licensee completes modifications to achieve compliance with GDC 2, whichever is sooner.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (56 FR 36849).

This Exemption is effective as of the date of its issuance.

Dated at Rockville, Maryland this 1st day of August 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18963 Filed 8-8-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-69A]

Japanese Government Procurement Policies Affecting Architectural, Engineering and Construction Services and Related Consulting Services

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of bilateral agreement and further monitoring pursuant to section 306 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2416.

SUMMARY: This notice provides follow-up information to a notice published in the **Federal Register** on May 1, 1991 (56 FR 20057). On November 21, 1989, the USTR determined, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government were unreasonable and burdened or restricted U.S. commerce. The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at that time in light of certain commitments made by the Government of Japan. The USTR has been monitoring Japan's implementation of these commitments pursuant to section 306 of the Trade Act, and has been seeking a satisfactory resolution of additional concerns in bilateral negotiations, which have included a full review of the "Major Projects Arrangements" (MPA) concluded by the United States and Japan in 1988.

As of April 1991, those negotiations had not yet resulted in a satisfactory agreement. Therefore, on April 26, 1991, the USTR proposed to impose restrictions on the provision in the United States of architectural, engineering and construction-related services of Japan, by determining that no Japanese contractor or subcontractor would be eligible to enter into such services contracts with certain federal agencies for the construction, alteration, or repair of any public buildings or public works in the United States. Notice of the proposed action was published in the **Federal Register** on May 1, 1991 (56 FR 20057), and public comment was solicited and received.

On June 1, 1991, negotiations with the Government of Japan resulted in an agreement that substantially improves procedures in the MPA and expands its coverage, addressing many of the U.S. concerns regarding the Japanese Government procurement policies affecting architectural, engineering and construction services and related consulting services identified in the USTR's determination of November 21, 1989. Therefore, the USTR will not take action at this time against Japan under section 301 of the Trade Act. The United States will monitor Japan's implementation of this trade agreement pursuant to section 306 of the Trade Act.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Erin Endean, Director for Japan, Office of Japan and China Affairs, USTR, (202) 395-5071; or Terri Van Hoozer, Office of Japan, U.S. Department of Commerce, (202) 377-4527.

SUPPLEMENTARY INFORMATION: On November 21, 1988, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418, 102 Stat. 1182), the United States Trade Representative initiated an investigation under section 302 of the Trade Act regarding those acts, policies and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance in Japan by United States persons of

architectural, engineering, and construction services, and related consulting services.

On the basis of the invsetigation and after consulations with the Government of Japan and the affected U.S. industry, the USTR determined, on November 21, 1989, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government were unreasonable and burdened or restricted U.S. commerce.

The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at that time in light of (a) written commitments made by the Government of Japan regarding actions the Government of Japan intended to take to improve access for U.S. firms to its market, and (b) written commitments made by the Government of Japan to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including consultations that had been scheduled for spring 1990 in the context of a review of the Major Projects Arrangements concluded by the Governments of Japan and the United States in May 1988.

The USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan implemented procurement policies in the construction sector in a way that limited competition and facilitated collusive bidding practices ("dango"), including inadequate use of administrative measures restricting collusive bidding activities, and operation of the designated bidder system. Specific reasons for the USTR's determination were set forth in a **Federal Register** notice published on November 29, 1989 (54 FR 49150).

In addition, the USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan used open bidding procedures only in the 14 construction projects covered by the Major Projects Arrangements. In negotiations with the Government of Japan following these determinations, the United States sought to expand the coverage of those Arrangements to additional public works projects, and to revise the Arrangements to address existing problems. However, as of April 1991, those negotiations had not yet resulted in a satisfactory agreement. Therefore, on April 26, 1991, the USTR proposed to impose restrictions on the provision in the United States of architectural, engineering and construction-related services of Japan, by determining that no Japanese contractor or subcontractor would be eligible to enter into such services contracts with certain federal agencies for the construction, alteration, or repair of any public buildings or public works in the United States. Specifically, the proposed action would have barred Japanese contractors or subcontractors from federal or federally-funded public buildings or public works procurements by the U.S. Departments of Energy, Transportation, and Defense, including the U.S. Army Corps of Engineers, and the Bureau of Reclamation of the Department of Interior, in a manner consistent with the obligations of the United States under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Government Procurement negotiated under the auspices of the GATT. Notice of the proposed action was published in the **Federal Register** on May 1, 1991 (56 FR 20057), and public comment was solicited and received.

On June 1, 1991, U.S. and Japanese negotiators concluded an agreement and a formal exchange of letters was signed on July 31, 1991. The agreement provides procedural improvements to the MPA, expands the scope of its coverage, requires a review after one year, and commits the Government of Japan to take further steps to open its construction market to foreign firms.

A copy of the agreement has been docketed in USTR Docket Number 301-69A. The docket is available for public inspection at the USTR Reading Room, where copies of the agreement can be made: Room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC. An appointment to review the docket may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday. In addition, further information regarding the agreement may be obtained from the Office of Japan, U.S. Department of Commerce, Attn: Terri Van Hoozer, (202) 377-4527.

Since the agreement resolves many U.S. concerns, and provides for periodic review of the implementation of the agreement, the USTR has determined that no action should be taken under section 301, and that the United States will monitor Japan's implementation of the agreement pursuant to section 306 of the Trade Act. If Japan's implementation of the agreement is unsatisfactory, the USTR shall consider at that time what further action may be appropriate under section 301 of the Trade Act.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91-18999 Filed 8-8-91; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 91-16]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of certificates of alternative compliance to vessels.

SUMMARY: This notice lists commercial vessels granted Certificates of Alternative Compliance by the Commander, Eighth Coast Guard District, since 1 May 1990. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Navigation Rules for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessel's special functions. The intent of this notice is to advise the mariner of those vessels that have been granted Certificates of Alternative Compliance.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Commander David A. Riikonen, USCG, c/o Commander, Eighth Coast Guard District (mvs), Hale Boggs Federal Building, room 1341, 501 Magazine Street, New Orleans, LA 70130-3396. Telephone (504) 589-6271.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules for light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The alternative permitted results in the closest possible compliance with Annex I of the 72 COLREGS. The Eighth Coast Guard District has on record a total of 114 vessels to which it granted Certificates of Alternative Compliance since 1 May 1990. These vessels are incapable of complying with the 72 COLREGS provisions. Following is a list of commercial vessels that are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

Vessel	Official No.	Alternative
Helena Lynn II	5876363	Carries its sidelights atop the pilothouse cabin, approximately 1 M forward of the masthead light.
Casey Chouest	637056	Carries its not-under-command lights on the main mast some 12.7 M above the main and 19.4 M abaft the stem.
Cape Hatteras	Leevac Hull No. 284.	Carries its second mast-head light on a mast located some 16.7 M above the main deck and some 17 M abaft the forward masthead light.
Chesley E	632776	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 7.6 M abaft the forward plane of the tow knee.
J.E. O'Donnell	640379	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 9.1 M abaft the forward plane of the tow knee.
Capt. Jim Green	562434	Carries its sidelights atop the pilothouse, some 1.9 M inboard from the side and some 8.6 M abaft the forward plane of the tow knee.
John T. Stellman	542081	Carries its sidelights atop the pilothouse, some 1.9 M inboard from the side and some 8.5 M abaft the forward plane of the tow knee.
Capt. Charlie Lawrence.	616633	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Challenger	659953	Carries its sidelights atop the pilothouse, some 2.2 M inboard from the side and some 8.7 M abaft the forward plane of the tow knee.
Voyager	563475	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 8.6 M abaft the forward plane of the tow knee.
Venture	644762	Carries its sidelights atop the pilothouse, some 2.5 M inboard from the side and some 9.8 M abaft the forward plane of the tow knee.
Enterprise	550135	Carries its sidelights atop the pilothouse, some 2.5 M inboard from the side and some 6.7 M abaft the forward plane of the tow knee.
Discovery	562649	Carries its sidelights atop the pilothouse, some 2.5 M inboard from the side and some 6.1 M abaft the forward plane of the tow knee.
W.C. Binion	626319	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.
Coldfire	566498	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 8.9 M abaft the forward plane of the tow knee.
Royal Enterprise	615633	Carries its second masthead lights on a mast structure some 17.9 M above the main deck and some 16.8 M abaft the stem.
Antelope	554968	Carries its second masthead lights on a mast structure some 16.1 M above the main deck and some 15.2 M abaft the forward masthead light.
Frances Drake	519922	Carries its sidelights atop the pilothouse cabin. some 2.4 M inboard from the vessel's side and some 8.5 M abaft the forward plane of the tow knee.
Saga Service	640553	Carries its second masthead light on a mast structure some 15.9 M above the main deck and some 13 M abaft the forward perpendicuar.
J. Ann	570130	Carries its sidelights atop the pilothouse cabin, some 2.4 M inboard from the vessel's side and some 6.1 M abaft the forward plane of the tow knee.
Banda Seahorse	561338	Carries its second masthead light on a mast structure some 12.5 M abaft the forward masthead light and some 13.4 M above the main deck.
Miss Pat	542543	Carries its sidelights atop the pilothouse, some 2 M inboard from the vessel's side and some 7 M abaft the forward plane of the tow knee.
D. Mark	293340	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 5.2 M abaft the forward plane of the tow knee.
Mr. Jimmy	612130	Carries its sidelights atop the pilothouse, some .9 M inboard from the side and some 6.7 M abaft the forward plane of the tow knee.
Martin Voyager	523750	
Martin Pride	560543	
E.A. Gonsulin	530861	Carries its sidelights atop the pilothouse, some 3 M inboard from the side and some 8 M abaft the forward plane of the tow knee.
Johnny Sr	643266	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 8.5 M abaft the forward plane of the tow knee.
Jimmy P. Lafont	565687	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 8.2 M abaft the forward plane of the tow knee.
Johnny James	552794	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 8.8 M abaft the forward plane of the tow knee.
Trojan Warrior	570738	Carries its sidelights atop the pilothouse, some 2.8 M inboard from the side and some 10.2 M abaft the forward plane of the tow knee.
Pere Marquette	571622	
Compass Ideal	555976	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Compass Hero	554249	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Compass Crest	512615	Carries its sidelights atop the pilothouse, some 1.6 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Pam D	512698	
Compass Flag	512697	
Compass Enterprise	559972	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 6.9 M abaft the forward plane of the tow knee.
Compass Glory	553499	
Compass Freedom	551557	
Lois Ann	556629	Carries its sidelights atop the pilothouse, some 4.7 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Vecturian	294085	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 5.5 M abaft the forward plane of the tow knee.
Argonaut	562640	Carries its sidelights atop the pilothouse, some 5.5 M inboard from the side and some 9.9 M abaft the forward plane of the tow knee.
Jason	557274	Carries its sidelights atop the pilothouse, some 5.5 M inboard from the side and some 8.9 M abaft the forward plane of the tow knee.
Orleanian	535492	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 13.9 M abaft the forward plane of the tow knee.
Sarah Elizabeth	518938	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 10.9 M abaft the forward plane of the tow knee.

Vessel	Official No.	Alternative
City of St Louis	502876	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 10.6 M abaft the forward plane of the tow knee.
Daniel Webster	288062	
Roy Mechling	501192	
Lynn B	272165	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 9.4 M abaft the forward plane of the tow knee.
Craig M	272240	
Bill McCormick	278014	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 7.7 M abaft the forward plane of the tow knee.
Dela Salle	614608	Carries its sidelights atop the pilothouse, some 3.5 M inboard from the side and some 6.5 M abaft the forward plane of the tow knee.
James F. Towey	568705	Carries its sidelights atop the pilothouse, some 5.3 M inboard from the side and some 7.9 M abaft the forward plane of the tow knee.
Northern	512466	Carries its sidelights atop the pilothouse, some 2.9 M inboard from the side and some 9.3 M abaft the forward plane of the tow knee.
Theresa Seley	275952	Carries its sidelights atop the pilothouse, some 2.9 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Southern	266359	Carries its sidelights atop the pilothouse, some .6 M inboard from the side and some 9.4 M abaft the forward plane of the tow knee.
Buckles	542067	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 5.9 M abaft the forward plane of the tow knee.
Miss Laurie	575834	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 4.9 M abaft the forward plane of the tow knee.
Belgian	626287	Carries its sidelights atop the pilothouse, some 1.7 M inboard from the side and some 6.1 M abaft the forward plane of the tow knee.
Clydesdale	524128	
Cyndi Spanier	563581	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 6.9 M abaft the forward plane of the tow knee.
Kurt Spanier	563142	
Louise Spanier	554085	Carries its sidelights atop the pilothouse, some 1.7 M inboard from the side and some 8.4 M abaft the forward plane of the tow knee.
Luby Guidry	557119	
Percheron	617862	Carries its sidelights atop the pilothouse, some 2.9 M inboard from the side and some 5.4 M abaft the forward plane of the tow knee.
Shire	610520	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 8.3 M abaft the forward plane of the tow knee.
Bud Spanier	569124	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 4.6 M abaft the forward plane of the tow knee.
Albert Cenac	291746	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 7.9 M abaft the forward plane of the tow knee.
Tee Cenac	642927	Carries its sidelights atop the pilothouse, some 2.2 M inboard from the side and some 8.6 M abaft the forward plane of the tow knee.
Justin Cenac	643832	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 8.0 M abaft the forward plane of the tow knee.
Clinton Cenac	656371	
Camie Cenac	650588	
O.J. Cenac	294775	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 8.2 M abaft the forward plane of the tow knee.
A.J. Cenac	501746	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 8.3 M abaft the forward plane of the tow knee.
Robert P. Frazier	557739	Carries its sidelights atop the pilothouse, some 1.5 M inboard from the side and some 10.0 M abaft the forward plane of the tow knee.
Traveler	552463	Carries its sidelights atop the pilothouse, some 0.9 M inboard from the side and some 10.0 M abaft the forward plane of the tow knee.
Creole Lady	510588	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 5.8 M abaft the forward plane of the tow knee.
Creole Jane	285776	Carries its sidelights atop the pilothouse, some 1.7 M inboard from the side and some 6.6 M abaft the forward plane of the tow knee.
Creole Pass	294760	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 4.3 M abaft the forward plane of the tow knee.
Creole Sue	521156	Carries its sidelights atop the pilothouse, some 2.8 M inboard from the side and some 5.1 M abaft the forward plane of the tow knee.
Creole Sunn	513369	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 6.2 M abaft the forward plane of the tow knee.
Creole Rivers	590667	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 3.7 M abaft the forward plane of the tow knee.
Miss Rita	561160	Carries its sidelights atop the pilothouse, some 1.2 M inboard from the side and some 7.3 M abaft the forward plane of the tow knee.
Creole Ann	519093	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 4.9 M abaft the forward plane of the tow knee.
Creole Chief	566823	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 5.6 M abaft the forward plane of the tow knee.
Medicine Bow	568290	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Charlotte	571331	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 9.1 M abaft the forward plane of the tow knee.
Lime Rock	538804	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Daytona	550007	Carries its sidelights atop the pilothouse, some 3.5 M inboard from the side and some 11.9 M abaft the forward plane of the tow knee.
Sugarland	515199	Carries its sidelights atop the pilothouse, some 3.6 M inboard from the side and some 5.1 M abaft the forward plane of the tow knee.
Long Beach	561813	Carries its sidelights atop the pilothouse, some 3.3 M inboard from the side and some 12.0 M abaft the forward plane of the tow knee.
Pocono	641470	Carries its sidelights atop the pilothouse, some 1.1 M inboard from the side and some 5.9 M abaft the forward plane of the tow knee.
Pebble Beach	643918	
Riverside	660292	Carries its sidelights atop the pilothouse, some 2.6 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.

Vessel	Official No.	Alternative
Chotin	549164	Carries its sidelights atop the pilothouse, some 4.1 M inboard from the side and some 7.3 M abaft the forward plane of the tow knee.
Noble C. Parsonage	558334	Carries its sidelights atop the pilothouse, some 4.3 M inboard from the side and some 12.8 M abaft the forward plane of the tow knee.
Leviticus	577329	Carries its sidelights atop the pilothouse, some 4.0 M inboard from the side and some 5.0 M abaft the forward plane of the tow knee.
Tiffany	638361	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 5.5 M abaft the forward plane of the tow knee.
Habibi	611407	
Morgan	637538	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 5.5 M abaft the forward plane of the tow knee.
Dottie	626298	
Gene Neal	563529	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.
Dennis Ross	544705	Carries its sidelights atop the pilothouse, some 3.8 M inboard from the side and some 6.8 M abaft the forward plane of the tow knee.
General Washington	6243349	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 7.2 M abaft the forward plane of the tow knee.
Precursor	560594	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 4.9 M abaft the forward plane of the tow knee.
Ivis	534836	Carries its sidelights atop the pilothouse, some 0.7 M inboard from the side and some 6.9 M abaft the forward plane of the tow knee.
John Clayton	641329	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 6.6 M abaft the forward plane of the tow knee.
Janice Carol	639580	
Lucille Brooks	674615	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 7.2 M abaft the forward plane of the tow knee.
E. A. Gonsoulin	530861	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 8.0 M abaft the forward plane of the tow knee.
Binton	626319	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.
Challenger	659953	Carries its sidelights atop the pilothouse, some 2.2 M inboard from the side and some 8.7 M abaft the forward plane of the tow knee.

Dated: August 5, 1991.

T.D. Fisher,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 91-18845 Filed 8-8-91; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. 91-37; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 BMW Model 525i Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989 Model 525i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt of a petition by the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1989 BMW Model 525i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to two vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is September 9, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R-90-007) has petitioned NHTSA to determine whether the 1989 BMW Model 525i passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are the U.S.-companion model 1989 BMW 525i and the 1989 BMW Model 535i and it has submitted information indicating that these companion models have been offered for sale in the United States. These models were manufactured by Bayerische Motoren-Werke A.G. and were certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner notes that the agency, on its own initiative, has already made a determination of substantial similarity covering 1989 Model 535i vehicles that Bayerische Motoren-Werke A.G. did not certify and offer for sale in the United States (55 FR 47418). The petitioner stated that it had carefully compared the

525i with U.S.-companion models 525i and 535i, and found that they were substantially similar with respect to most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the 1989 model 525i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 U.S.-companion models 525i and 535i, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1989 model 525i is identical to the U.S. certified 1989 models 525i and 535i with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam-type headlamps; (b) installation of front and rear sidemarker lamps and reflex reflectors; (c) installation of U.S.-model taillamp assemblies bearing the DOT symbol; (d) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Replacement of the passenger's outside rearview mirror, which is convex and does not bear the required warning statement.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Intergrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection cannister.

Additionally, the petitioner states that the bumpers on the 1989 model 525i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 9, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on August 6, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-18974 Filed 8-8-91; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 9, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10643-N	Thiokol Corporation, Brigham City, UT	49 CFR 173.92	To authorize the transportation of rocket motors, equipped with handling rings, classed as Class B explosives in specially designed packaging. (Mode 1.)
10644-N	Ulrich Chemical, Inc., Terre Haute, IN	49 CFR 174.87(i)(j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10645-N	Essex Cryogenics of Missouri, Inc., St. Louis, MO	49 CFR 178.57	To authorize the manufacture, marking and sell of one-liter non-DOT specification cylinders comparable to specification 4L for shipment of oxygen. (Mode 1.)
10646-N	Schlumberger Technology Corporation, Houston, TX	49 CFR 173.302	To manufacture, mark, and sell a non-DOT specification oil well sampling device for shipment of various compressed gases. (Modes 1, 2, 3, 4.)
10647-N	The McGregor Co., Colfax, WA	49 CFR 174.67(i) + (j)	To authorize anhydrous ammonia filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10648-N	Arrow Air Inc., Miami, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b)	To authorize the transportation of Class A, B, and C explosives which are forbidden for shipment by cargo air or exceed quantity limitations authorized by cargo air. (Modes 1, 2, 4.)
10649-N	The Narragansett Bay Commission, Providence, RI	49 CFR 174.67(i)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10650-N	Unitd Agri Products, Greeley, CO	49 CFR 174.67(i)(j)	To authorize tank cars containing various classes of material to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10651-N	Ashland Chemical, Inc., Columbus, OH	49 CFR 173.34(e)	To eliminate the periodic retest, reinspection and marking requirements for DOT Specification 4BW cylinders authorized for the transportation of flammable liquids. (Mode 1.)
10653-N	Florida West Airlines, Miami, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.320(b), Part 107, Appendix B.	To authorize the transportation of Class A, B and C explosives which are forbidden for shipment by cargo air or exceed quantity limitations authorized cargo aircraft. (Mode 4.)
10656-N	Conference of Radiation Control Program Dir., Inc., Frankfort, KY	49 CFR 107, appendix B, 172.203(d), 49 CFR Part, of Part 172, Paragraph (1), Subparts C, D, E, F and G, to subpart B	To authorize shipment of metals and scrap contaminated with small amounts of radioactive materials to be contained in non-DOT specification packaging, without regard to marking, labeling, placarding and certain shipping paper requirements. (Modes 1, 2.)
10657-N	Bioqual, Inc., Rockville, MD	49 CFR 173.416(c)	To authorize a one time only, short distancer, domestic shipment of a radicactive material contained in a specially designed packaging which is only authorized for export and import shipments. (Mode 1.)
10658-N	Air Care, Inc., South St. Paul, MN	49 CFR 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), 49 CFR 172.101, 49 CFR part 107, appendix B.	To authorize the transportation of certain Class A, B and C explosives which are either forbidden for shipment by cargo air or exceed the quantity limitations authorized for shipment of cargo air. (Mode 4.)
10659-N	Consani Engineering (PTY) Limited, Republic of South Africa	49 CFR 178.345-8	To authorize the manufacture, mark and sell of non-DOT specification portable tank containers complying with specifications DOT-407 and DOT 412 for transportation hazardous waste substances. (Modes 1, 2, 3.)
10660-N	American Radiolabeled Chemicals, Inc., St. Louis, MO	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i-iii), 173.4(a)(1)(iv)	To exempt from labeling shipment of radioactive materials with secondary hazard classification for transportation by passenger carrying aircraft. (Mode 5.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-18972 Filed 8-8-91; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with th suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 26, 1991.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of

comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
7648-X	Sunwest Aviation, Ogden, UT (See footnote 1).	7648
8967-X	Hercules, Inc., Wilmington, DE (See footnote 2).	8967
9265-X	Guinn Flying Service, Houston, TX (See footnote 3).	9265
9618-X	ENPAC Corporation, Jacksonville, FL (See footnote 4).	9618
10102-X	ENPAC Corporation, Jacksonville, FL (See footnote 5).	10102
10130-X	UF Strainrite, Lewiston, ME (See footnote 6).	10130
10193-X	Anderson Company, Gainesville, TX (See footnote 7).	10193
10242-X	ENPAC Corporation, Jacksonville, FL (See footnote 8).	10242
10272-X	Olin Corporation, Charleston, TN (See footnote 9).	10272
10318-X	Sonoco Fibre Drum, Inc., Lombard, IL (See footnote 10).	10318

(1) To modify the exemption to increase the number of flares to be transported per test flight to eight.
(2) To renew and modify the exemption to authorize the transportation of an additional Class B explosive.
(3) To modify the exemption to authorize one pilot aboard a multi-engine aircraft carrying explosives.
(4) To renew and modify the exemption to authorize cargo vessel as an additional mode of transportation.
(5) To modify the exemption to include cargo vessel as an additional mode of transportation.
(6) To modify the exemption to authorize radioactive waste as an additional commodity and air cargo as an additional mode of transportation.
(7) To modify the exemption to provide for various modifications to the non-DOT specification portable tank and to authorize the transportation of various additional commodities.
(8) To modify the exemption to include cargo vessel as an additional mode of transportation.
(9) To authorize a DOT-MC-331 cargo tank for nonflammable gas to be lined with a PVCF or equivalent lining; to provide optional valve and authorize a second manway without appurtenances and cover.
(10) To modify the exemption to provide for additional commodities classed as Class B poison and corrosive material with secondary hazards.

Application No.	Applicant	Parties to exemption
2582-P	Presto Technologies, Inc., West Hartford, CT.	2582
3004-P	Presto Technologies, Inc., West Hartford, CT.	3004
4453-P	Gary James Trucking, Palmyra, MO.	4453
4631-P	Gary James Trucking, Palmyra, MO.	4631
4884-P	Presto Technologies, Inc., West Hartford, CT.	4884
5206-P	Gary James Trucking, Palmyra, MO.	5206
6530-P	The Jimmie Jones Company, Tulsa, OK.	6530
6543-P	Presto Technologies, Inc., West Hartford, CT.	6543
6543-P	Liquid Carbonic, Chicago, IL.	6543
6563-P	Presto Technologies, Inc., West Hartford, CT.	6563
6626-P	Airgas, Inc., Theodore, AL	6626
6657-P	Airgas, Inc., Theodore, AL	6657
6691-P	Presto Technologies, Inc., West Hartford, CT.	6691
6691-P	Airgas, Inc., Theodore, AL	6691
6805-P	Presto Technologies, Inc., West Hartford, CT.	6805
7268-P	Presto Technologies, Inc., West Hartford, CT.	7268
7274-P	Presto Technologies, Inc., West Hartford, CT.	7274
7451-P	Presto Technologies, Inc., West Hartford, CT.	7451
7617-P	Elgin, Joliet and Eastern Railway Company, Joliet, IL.	7616
7616-P	Montana Rail Link, Inc., Missoula, MT.	7616
8009-P	SRI International, Menlo Park, CA.	8009
8013-P	Presto Technologies, Inc., West Hartford, CT.	8013
8453-P	Gary James Trucking, Palmyra, MO.	8453
8554-P	Gary James Trucking, Palmyra, MO.	8554
8862-P	Presto Technologies, Inc., West Hartford, CT.	8862
8915-P	Presto Technologies, Inc., West Hartford, CT.	8915
8944-P	Presto Technologies, Inc., West Hartford, CT.	8944
8986-P	Gary James Trucking, Palmyra, MO.	8986
9110-P	EKA Nobel Inc., Columbus, MS.	9110
9275-P	SmithKlein Beecham Consumer Brands, Pittsburgh, PA.	9275
9414-P	Presto Technologies, Inc., West Hartford, CT.	9414
9694-P	DXI Industries, Inc., Houston, TX.	9694
9723-P	Chem-Freight, Inc., Cleveland, OH.	9723
9723-P	Evergreen Transportation, Inc., Cleveland, OH.	9723
10022-P	Presto Technologies, Inc., West Hartford, CT.	10022
10084-P	K.T. Specialties, Inc., Corona, CA (See Footnote 1).	10084
10288-P	Rohm and Haas Company, Philadelphia, PA.	10288

(1) To manufacture, mark and sell non-DOT specification glass fiber reinforced plastic cargo tanks for shipment of certain flammable, corrosive or poision B materials.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 5, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-18973 Filed 8-8-91; 8:45 am]

BILLING CODE 4910-60-M

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. Each meeting will be in room 4234 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC.

On September 10, 1991, at 9 a.m., the Technical Pipeline Safety Standards Committee will meet to informally discuss the following topics:

1. Excess Flow Valves in Gas Service Lines
2. Petroleum Gas Systems and National Fire Protection Association Standards 58 and 59
3. Gas Distribution System Definitions
4. Passage of Instrumented Internal Inspection Devices
5. Mandatory Participation of Gas Pipelines in One-Call Systems
6. Operator Submission of Annual Drug Testing Data
7. Performance-Based Grant Allocation Formula
8. Legislative Developments

On September 11, 1991, at 9 a.m., the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet to informally discuss the following topics:

1. Pipelines Operating at 20 Percent or Less of Specified Minimum Yield Strength
2. Passage of Instrumental Internal Inspection Devices
3. Mandatory Participation of Hazardous Liquid and Carbon Dioxide Pipelines in One-Call Systems
4. Operator Submission of Annual Drug Testing Data
5. Performance-Based Grant Allocation Formula
6. Legislative Developments

Each meeting will be open to the public, but attendance will be limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the topics. Due to the limited time available, each

person who wants to make an oral statement must notify Rebecca Key, room 8417, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1640, not later than Tuesday, September 3, 1991, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committees before or after any meeting.

Dated: August 5, 1991.

Cesar De Leon,

Executive Director, Technical Pipeline Safety Standards Committee and Technical Hazardous Liquid Pipeline Safety Standards Committee.

[FR Doc. 91–18933 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 1, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0041
Form Number: CF 6059B
Type of Review: Extension
Title: U.S. Customs Declaration
Description: The Customs Form 6059B facilitates the clearance of persons and their goods upon arrival in the territory of the U.S. by requiring basic information necessary to determine Customs exception status and if any duties or taxes are due. The form is used for the enforcement of other Federal agencies' laws and regulations.
Respondents: Individuals or households, small businesses or organizations.
Estimated Number of Respondents: 20,000,000.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000,000 hours.
Clearance Officer: Ralph Meyer, (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18930 Filed 8–8–91; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

August 1, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0089
Form Number: 1040NR
Type of Review: Revision.
Title: U.S. Nonresident Alien Income Tax Return
Description: This form is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts
Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 253,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—6 hours, 33 minutes
Learning about the law or the form—1 hour, 59 minutes
Preparing the form—4 hours, 8 minutes
Copying, assembling, and sending the form to the IRS—1 hour, 37 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 3,360,272 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18931 Filed 8–8–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

August 5, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: New
Form Number: PD F 345
Type of Review: New Collection
Title: Description of Registered Securities
Description: PD F 345 is used to collect information needed to describe registered securities for the purpose of identifying accounts and/or requesting a change of address for the mailing of interest due on the securities
Respondents: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,250 hours.

OMB Number: New
Form Number: PD F 4094
Type of Review: New Collection
Title: Affidavit by Individual Surety
Description: PD F 4094 serves as an affidavit from individuals who agree to act as surety for an indemnification agreement on a Bond of Indemnity submitted in connection with a claim for relief due to lost, stolen or destroyed U.S. Registered Securities. The individual must state their assets and liabilities to certify they are eligible to act as surety

Respondents: Individuals or households.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 460 hours.

OMB Number: 1535–0004
Form Number: PD F 1522
Type of Review: Reinstatement
Title: Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized
Description: Form PD F 1522 is used by owners of savings bonds/notes to request payment

Respondents: Individuals or households.
Estimated Number of Respondents: 56,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 14,000 hours.

OMB Number: 1535–0006
Form Number: PD F 2458
Type of Review: Reinstatement
Title: Certificate of Entitlement, United States Savings and Retirement Securities and Checks After Administration of Decedent's Estate
Description: Form PD F 2458 is used to establish who is entitled to savings bonds/notes, and checks issued in payment thereof, in an amount not exceeding $1,000; which belonged to a decedent whose estate was administered in court and settled without effecting disposition of the bonds and checks

Respondents: Individuals or households.
Estimated Number of Respondents: 7,000.
Estimated Burden Hours Per Response: 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 938 hours.

OMB Number: 1535–0007
Form Number: PD F 1946
Type of Review: Reinstatement
Title: Application for Disposition, United States Savings Bonds/Notes and/or Related Checks (In a combined amount not exceeding $1,000) Owned by Decedent Whose Estate is Being Settled Without Administration
Description: Form PD F 1946 is used by person(s) entitled to a decedent's estate not being administered to request payment or reissue of savings bonds/notes and/or related checks not exceeding $1,000

Respondents: Individuals or households.
Estimated Number of Respondents: 40,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 20,000 hours.

OMB Number: 1535–0008
Form Number: PD F 1938
Type of Review: Reinstatement
Title: Request for Reissue of United States Savings Bonds/Notes During the Lives of Both Coowners
Description: Form PD F 1938 is used to request reissue of savings bonds/notes during the lives of both coowners.

Respondents: Individuals or households
Estimated Number of Respondents: 37,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,179 hours.

OMB Number: 1535–0010
Form Number: PD F 1782, and Schedules C, J, P, and T
Type of Review: Reinstatement
Title: Application for Redemption at Par of United States Treasury Bonds Eligible for Payment of Federal Estate Tax; Schedule C—Bonds Held as Community Property; Schedule J—Bonds Jointly Held; Schedule P—Bonds Held in Partnership; Schedule T—Bonds Held in Trust
Description: PD F 1782 is used to apply for redemption at par of certain Treasury Bonds eligible for payment of Federal estate tax assessed against a decedent's estate

Respondents: Individuals or households
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,250 hours.

OMB Number: 1535–0012
Form Number: PD F 1455
Type of Review: Reinstatement
Title: Request by Fiduciary for Reissue of United States Savings Bonds/Notes
Description: Form PD F 1455 is used by fiduciary to request distribution of savings bonds/notes to the person(s) entitled.

Respondents: Individuals or households, farms, businesses or other for-profit.
Estimated Number of Respondents: 72,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 36,000 hours.

OMB Number: 1535–0058
Form Number: PD F 1646
Type of Review: Reinstatement
Title: Application for Disposition, United States Registered Securities and Related Checks Without Administration of Deceased Owner's Estate
Description: PD F 1646 lessens the paperwork necessary to apply for the disposition of U.S. Registered Securities and interest due thereon in accordance with state law for a decedent's estate which is not being administered by a court appointed representative

Respondents: Individuals or households.
Estimated Number of Respondents: 625.
Estimated Burden Hours Per Response: 1 hour, 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 938 hours.

OMB Number: 1535–0067
Form Number: PD F 974
Type of Review: Extension
Title: Certificate by Owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments
Description: Form PD F 974 is used by owners of United States securities to certify that the signature was forged to a request for payment or an assignment

Respondents: Individuals or households
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 750 hours.

Clearance Officer: Rita DeNagy, (202) 447–1315, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street SW., Washington, DC 20239–0001.
OMB Reviewer: Miko Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18932 Filed 8–8–91; 8:45 am]

BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review

August 5, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Customs Service

OMB Number: 1515–0013.
Form Number: CF 3171.
Type of Review: Extension.
Title: Application—Permit—Special License Unlading-Lading-Overtime Services
Description: This is an application, permit, and special license for unlading of passengers, cargo, and baggage from a vessel arriving from any port or place outside the Customs territory of the U.S., or the lading of cargo, baggage or other articles destined to a port or place outside the Customs territory of the U.S. It is also an application for overtime or clearance of a vessel.
Respondents: Businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 1,500.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 39,900 hours.
Clearance Officer: Ralph Meyer (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW. Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–18954 Filed 8–8–91; 8:45 am]

BILLING CODE 4820–02–M

Office of the Secretary

[Department Circular—Public Debt Series—No. 26–91]

Treasury Bonds of August 2021

Washington, August 1, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $12,000,000,000 of United States securities, designated Treasury Bonds of August 2021 (CUSIP No. 912810 EK 0), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated August 15, 1991, and will accrue interest from that date, payable on a semiannual basis on February 15, 1992, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2021, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Thursday, August 8, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 7, 1991, and received no later than Thursday, August 15, 1991.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservation expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at ⅛ of one percent increment, which results in an equivalent average accepted price close to 100,000 and a lowest accepted price above the original issue discount limit of 92,500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price of each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted as the price equivalent to the weighted average yields of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any of all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of Public Debt, whenever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Thursday, August 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, August 13, 1991. When payment has been submitted with the tender and the purchase price of the bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the

public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2021, CUSIP No. 912810 EK 0

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2021 due August 15, 2021, due August 15, 2021, CUSIP No. 912803 AX 1.

INTEREST COMPONENTS

Designation	CUSIP NO. 912833
Treasury Interest (TINT) due:	
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS 7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5
Feb. 15, 2012	DB 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	DD 9
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0
Aug. 15, 2015	JT 8
Feb. 15, 2016	KG 4
Aug. 15, 2016	KJ 8
Feb. 15, 2017	KL 3
Aug. 15, 2017	KN 9
Feb. 15, 2018	KQ 2
Aug. 15, 2018	KS 8

INTEREST COMPONENTS—Continued

Designation	CUSIP NO. 912833
Feb. 15, 2019	KU 3
Aug. 15, 2019	KW 9
Feb. 15, 2020	KY 5
Aug. 15, 2020	LA 6
Feb. 15, 2021	LC 2
Aug. 15, 2021	LE 8

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	$40,000.00	$1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

[FR Doc. 91-18924 Filed 8-8-91; 8:45 am]

BILLING CODE 4810-40-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a special meeting will be held at the Federal Reserve Bank of New York on September 4, 1991, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session in connection with a written report to the Secretary of the Treasury.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person a privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: August 5, 1991.

Jerome H. Powell,

Assistant Secretary (Domestic Finance).

[FR Doc. 91-18946 Filed 8-8-91; 8:45 am]

BILLING CODE 4810-25-M

[Department Circular-Public Debt Series-No. 25-91]

Treasury Notes of August 15, 2001, Series C-2001

Washington, August 1, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $12,000,000,000 of United States securities, designated Treasury Notes of August 15, 2001, Series C-2991 (CUSIP No. 912827 B9 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The Notes will be dated August 15, 1991, and will accrue interest from that date, payable on a semiannual basis on February 15, 1992, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2001, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt

from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5 A Note may be held in its fully constituted form or it may be divided into it separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6 The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, August 7, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 6, 1991, and received no later than Thursday, August 15, 1991.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers are the amount for each customer and furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, August 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no

later than Tuesday, August 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be complete to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principle Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payments for, and to issue, maintain, service, and make payments on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 2001, Series C–2001, CUSIP No. 912827 B9 2.

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series C–2001 due August 15, 2001, CUSIP No. 912820 BB 2.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due	
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

[FR Doc. 91-18925 Filed 8-8-91; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 24-91]

Treasury Notes of August 15, 1994, Series T-1994

Washington, August 1, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $14,000,000,000 of United States securities, designated Treasury Notes of August 15, 1994, Series T-1994 (CUSIP No. 912827 B8 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 15, 1991, and will accrue interest from that date, payable on a semiannual basis on February 15, 1992, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, August 6, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be

considered timely if postmarked no later than Monday, August 5, 1991, and received no later than Thursday, August 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of noncompetitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan association; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

4.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rates will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, August 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash, in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, August 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2 The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-18926 Filed 8-8-91; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 20, 1991.

PLACE: 2033 K St. NW., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–19051 Filed 8–7–91; 8:53 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 27, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:
—Application of the Chicago Board of Trade for contract designation in cash settled short term (two year) U.S. Treasury Note futures
—Proposed amendment to Rule 32.4 to permit trade options on agricultural commodities

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–19052 Filed 8–7–91; 8:53 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, August 27, 1991.

PLACE: 2033 K St., NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–19053 Filed 8–7–91; 8:53 am]
BILLING CODE 6351–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration;
Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on August 6, 1991 (56 FR 37393) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for August 8, 1991. This notice is to amend the agenda for that meeting to remove an item form the open session.

FOR FURTHER INFORMATION CONTACT: Nan P. Mitchem, Acting Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for August 8, 1991, is amended to remove the following item from the open session:

Open Session
A. Approval of Minutes.

Dated: August 7, 1991.

Nan P. Mitchem,
Acting Secretary, Farm Credit Administration Board.

[FR Doc. 91–19081 Filed 8–7–91; 1:51 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:11 p.m. on Tuesday, August 6, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,728
Small Pool Liquidation Agreement
Case No. 47,725
The Bank of New England National Association, Boston, Massachusetts
Case No. 47,706
Gibraltar Savings Association, Houston, Texas

Matters relating to a certain financial institution.

Matters relating to an assistance agreement with an insured bank.

Matters relating to Corporation litigation.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: August 7, 1991.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 91–19106 Filed 8–7–91; 1:52 pm]
BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 14, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne,

Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–19065 Filed 8–7–91; 11:18 am]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 12, 1991.

A closed meeting will be held on Tuesday, August 13, 1991, at 2:30 p.m. An open meeting will be held on Thursday, August 15, 1991, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 13, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, August 15, 1991, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment rules implementing the Shareholder Communications Improvement Act of 1990. The proposed rules would: (1) Revise the shareholder communications rules to require brokers and banks that hold shares in nominee name to forward to beneficial owners of securities the proxy materials and information statements of investment companies registered under the Investment Company Act of 1940; (2) revise the shareholder communications rules to require brokers and banks to forward to beneficial owners the information statements of registrants under Section 12 of the Securities Exchange Act of 1934; and (3) revise the information statement rules to require all investment companies registered under the Investment Company Act of 1940 to transmit information statements to shareholders where proxies are not solicited. For further information, please contact Kathleen K. Clarke at (202) 272–2107.

2. Consideration of whether to adopt a new rule, Rule 3a–6 under the Investment Company Act of 1940 (the "Act"). The rule would provide an exception from the definition of "investment company" for foreign banks and foreign insurance companies for all purposes under the Act. Adoption of the rule would permit foreign banks, foreign insurance companies, and related entities such as finance subsidiaries and holding companies, to offer and sell their securities in the United States without registering as investment companies under the Act or seeking individual exemptions from the Act's requirements. For further information, please contact Ann M. Glickman at (202) 272–3042.

3. Consideration of whether to propose for public comment rules implementing the large trader reporting section of the Market Reform Act of 1990. The proposed rules would: (1) Require a person that effects significant quantities of transactions in publicly traded securities to file Form 13H with the Commission disclosing such person's identity, affiliations, and accounts; (2) require broker-dealers that carry accounts to maintain records of transactions in publicly traded securities effected by or for such person's accounts; and (3) require such broker-dealers to report to the Commission upon request, transactions in publicly traded securities effected by or for such person's accounts. For further information, please contact Nicholas T. Chapekis at (202) 272–3115.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272–2400.

Dated: August 6, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–19018 Filed 8–6–91; 4:21 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

School Breakfast Program--Program Outreach

Correction

In rule document 91-15662 beginning on page 30309 in the issue of Tuesday, July 2, 1991, make the following correction:

On page 30311, in the first column, in amendatory instruction 2, in the first line, "[1]" should read "[l]".

BILLING CODE 1505-01-D

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendment to Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Rules of Practice and Procedure

Correction

In rule document 91-15753, beginning on page 30500, in the issue of Wednesday, July 3, 1991, make the following corrections:

§ 401.35 [Corrected]

On page 30502, in the first column, in § 401.35(a)(17) and (18), the first line of both paragraphs should read as follows: "The diversion or transfer of water".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 90-4, 84-1296, FCC 91-184]

Cable Service; Effective Competition Standard for Cable Basic Service Rates

Correction

In rule document 91-17102, beginning on page 33387, in the issue of Monday, July 22, 1991, make the following correction:

§ 76.33 [Corrected]

On page 33391, in the third column, in the **Note**, in the second line, "duplicated" should read "unduplicated".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 89P-0387]

Orthopedic Devices; Hip Joint Metal/Polymer/Metal Semiconstrained Porous-Coated Uncemented Prosthesis

Correction

In proposed rule document 91-16729 beginning on page 32145 in the issue of Monday, July 15, 1991, make the following corrections:

1. On page 32148, in the first column, in the second full paragraph, in the sixth line from the bottom, "foillowup" should read "followup".

2. On page 32149, in the third column, in the fourth full paragraph, in the last line, "135a" should read "135".

BILLING CODE 1505-01-D

federal register

Friday
August 9, 1991

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Red Lake Band of Chippewa Indians; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Red Lake Band of Chippewa Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register** notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Red Lake Band of Chippewa and the State of Minnesota executed on May 6, 1991.

SUPPLEMENTARY INFORMATION: Because of a typographical error, "Section 287" as referenced in the tribal trust land description in the second paragraph of the tribal-state compact should correctly be referenced as "Section 28".

DATES: This action is effective August 9, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7445.

Dated: August 2, 1991.

David Matheson,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–18947 Filed 8–8–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Friday
August 9, 1991

Part III

Department of Defense

48 CFR Parts 219, 232, and 252

Pilot Mentor-Protege Program; Notice of Partial Implementation and Final Rule

DEPARTMENT OF DEFENSE

Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Notice of partial implementation of the Pilot Mentor-Protege Program, final policy.

SUMMARY: The Department of Defense (DoD) is issuing a final policy which represents a partial implementation of the Pilot Mentor-Protege Program established under section 831 of Public Law 101–510. Under this implementation phase of the program, companies may request approval as mentor firms to provide developmental assistance to identified small disadvantaged businesses (SDBs) as protege firms. If approved as a mentor firm, DoD may provide the company with credit against SDB subcontracting goals, reimbursement or a combination of credit and reimbursement. Reimbursement under this phase of the program may only be requested by companies that are able to identify funding from a DoD contract program manager. Companies interested in becoming mentor firms will be solely responsible for the selection of SDBs as protege firms.

The DoD policy sets forth the implementation plan for the program with respect to companies that are interested in becoming mentor firms and want to receive credit against SDB subcontracting goals, reimbursement through funds identified by a DoD contract program manager or a combination of credit and reimbursement. The proposed DFARs coverage provides guidance on contracting officer's responsibilities regarding these aspects of the program.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Tracey Pinson Dennis, OUSD(A)SADBU, The Pentagon, room 2A340, Washington, DC 20301–3061.

SUPPLEMENTARY INFORMATION:

Background

Section 831 of Public Law 101–510 as amended, establishes the Pilot Mentor-Protege Program. The purpose of the program is to provide incentives to major DoD contractors to furnish SDBs with assistance designed to enhance their capabilities to perform as subcontractors and suppliers under DoD contracts and other contracts, in order to increase the participation of these concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts. Incentives for major DoD contractors to provide developmental assistance to SDBs consist of cost reimbursement, credit against SDB subcontracting goals established under DoD contracts or both.

A notice of the proposed policy was published for public comment on May 2, 1991, 56 FR 20318. In response to the proposed policy, DoD received approximately 65 comments. These comments were thoroughly analyzed and many of the recommendations have been adopted in the partial implementation of the final policy.

Pursuant to this implementation phase of the program, effective October 1, 1991, companies that are interested in being approved as mentor firms and are interested in either: (1) Receiving credit against SDB subcontracting goals or, (2) reimbursement as a result of the identification of funding by a DoD contract program manager, may apply to DoD to participate in the program. In order to be approved as a mentor firm, a company must be performing under at least one active subcontracting plan negotiated pursuant to FAR 19.7. A company must also submit: Their concept for participation in the program, information regarding their overall SDB program, data on awards to SDBs over the two preceding fiscal years and a letter of intent between the company and the selected protege firm indicating that, once approved as a mentor firm, they will negotiate a mentor-protege agreement. Upon review of this information, DoD will notify the requestor of approval or disapproval as a mentor firm (within 30 days). If a request is not approved the company may submit additional information for reconsideration. Once the mentor-protege agreement is negotiated and signed by both parties, it must be submitted to DoD. The review of the mentor-protege agreement will be to ensure that the agreement contains the elements required by the statute. The developmental assistance program may be implemented by the mentor firm after the mentor-protege agreement is approved (within 5 business days).

Companies that are interested in becoming mentor firms will be responsible for the selection of SDBs as protege firms. DoD will not be involved in the selection of protege firms, however, SDBs chosen as protege firms by the prospective mentor firm must meet the eligibility criteria with respect to size and disadvantage status set forth in the DoD policy.

The proposed DoD policy on the Pilot Mentor-Protege Program is as follows:

DoD Policy For The Pilot Mentor-Protege Program (Partial Implementation)

I. Purpose

A. This policy implements the Pilot Mentor-Protege Program (hereinafter referred to as the "Program") established under section 831 of Pub. L. 101–510, The National Defense Authorization Act for Fiscal Year 1991 as amended. The purpose of the Program is to:

(1) Provide incentives to major DoD contractors performing under at least one active approved subcontracting plan (may include a plan negotiated on a company wide or division wide basis) negotiated with DoD or other Federal agencies, to assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of SDBs as subcontractors and suppliers under DoD contracts, other Federal agency contracts and commercial contracts and;

(3) Foster the establishment of long term business relationships between SDBs and such contractors.

B. Under the Program, eligible contractors approved as mentor firms will enter into mentor-protege agreements with eligible SDBs as protege firms to provide appropriate developmental assistance to enhance the capabilities of SDBs to perform as subcontractors and suppliers. According to the law, the Department of Defense may, provide the mentor firm with either cost reimbursement, credit against SDB subcontracting goals established under contracts with DoD or other Federal agencies, or a combination of credit and reimbursement.

C. DoD will measure the overall success of the Program by the extent to which the Program results in:

(1) An increase in the dollar value and percentage of subcontracts awarded to SDBs by mentor firms under DoD contracts;

(2) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies and under commercial contracts) since the date of their entry into the Program;

(3) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(4) An improvement in the participation of SDBs in DoD, other Federal agencies, and commercial

contracting opportunities that can be attributed to the development of SDBs as protege firms under the Program;

(5) An increase in subcontracting with SDB concerns in industry categories where SDBs have not traditionally participated within the mentor firm's vendor base;

(6) The involvement of emerging SDBs in the Program;

(7) An expanded relationship between mentor firms and protege firms to include non-DoD programs; and

(8) The development of protege firms that are competitive as subcontractors and suppliers to DoD or in other federal agencies or commercial markets.

D. This policy sets forth the procedures for participation in the Program applicable to companies that are interested in either receiving credit against SDB subcontracting goals or receiving reimbursement as a result of funding identified by a DoD contract program manager.

II. General Procedures

A. At any time between October 1, 1991 and September 30, 1994, companies interested in becoming mentor firms that want to take credit only for providing developmental assistance to one or more protege firms may apply to the Department of Defense for participation in the Program pursuant to the application process in VI (A) below.

B. At any time between October 1, 1991 and September 30, 1994, companies interested in becoming mentor firms that are able to identify funding from a DoD contract program manager(s) to provide developmental assistance to one or more protege firms apply to the Department of Defense for participation in the Program, pursuant to the application process in VI (E) below.

III. Program Duration

Activities under the program may only occur during the following periods:

(a) Approval of companies to participate in the Program as mentor firms, as described under section II, will be provided by DoD from October 1, 1991 until September 30, 1994;

(b) Performance under a mentor-protege agreement, only if such agreement was executed by the mentor firm and its protege firm and approved by DoD prior to October 1, 1994;

(c) Reimbursement of mentor firm's costs of providing developmental assistance to a protege firm(s), but only if the funding for such costs have been identified by a DoD contract program manager and such costs are incurred pursuant to the execution of a modification to a DoD contract(s) prior to October 1, 1996;

(d) Accord credit to a mentor firm toward the attainment of such firm's goals for subcontract awards to SDBs for costs of providing developmental assistance to its protege firms, only if such costs are incurred after the approval of a mentor-protege agreement and prior to October 1, 1999.

IV. Eligibility Requirements for a Protege Firm

A. A company may qualify as a protege firm if it is:

(1) A business concern as defined by section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(D)(3)(C)).

(2) Eligible for the award of Federal contracts.

(3) A small business according to the SBA size standard in the Standard Industrial Code (SIC) which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

B. A protege firm may self-certify to a mentor firm that it meets each of the eligibility requirements in A (1), (2) and (3) above. Mentor firms may rely in good faith on a written representation of a business concern that such business concern meets the requirements in A (1), (2) and (3) above.

C. A protege firm may only have one active mentor-protege agreement.

V. Selection of Protege Firms

A. Mentor firms will be solely responsible for selecting protege firms. Mentor firms are encouraged to identify and select protege firms that are defined as emerging SDB concerns.

B. The selection of protege firms by mentor firms may not be protested, except as in C below.

C. In the event of a protest regarding the size or disadvantaged status of a business concern to be a protege firm, the mentor firm shall refer the protest to the SBA to resolve in accordance with 13 CFR part 121 (with respect to size) or 13 CFR part 124 (with respect to disadvantaged status).

D. If at any time the protege firm is determined by the Small Business Administration not to be a small disadvantaged business concern, assistance furnished such business concern by the mentor firm after the date of the determination, may not be considered assistance furnished under the program.

VI. Approval Process for Companies to Participate in the Program as Mentor Firms

A. On or after October 1, 1991, a company interested in becoming a mentor firm and is seeking credit against SDB subcontracting goals for costs incurred under the Program, must submit a request to the DoD, USD(A) OSADBU to be approved as a mentor firm under the Program. The request will be evaluated on the extent to which the company's proposal addresses the items listed in B and C below. To the maximum extent possible, the request should be limited to not more than 20 pages, single spaced. A company may identify more than one protege in its request for approval under the Program. The information required in B and C below must be submitted to be considered for approval as a mentor firm, and may cover one or more proposed mentor-protege relationships.

B. A company must submit the following information:

(1) A statement that the company is currently performing under at least one active approved subcontracting plan (may include a plan negotiated on a company wide or division wide basis) negotiated with DoD or another federal agency pursuant to FAR 19.702, and that the company is currently eligible for the award of federal contracts.

(2) The number of proposed mentor-protege relationships covered by the request for approval as a mentor firm.

(3) A summary of the company's historical and recent activities and accomplishments under their SDB program. The company is encouraged to include any initiatives or outreach information believed to be pertinent to being approved as a mentor firm.

(4) The total dollar amount of DoD contracts and subcontracts received by the company during the two preceding fiscal years (show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of all other federal agency contracts and subcontracts received by the company during the two preceding fiscal years (show prime contracts and subcontracts separately per year.)

(6) The total dollar amount of subcontracts awarded by the company under DoD contracts during the two preceding fiscal years.

(7) The total dollar amount of subcontracts awarded by the company under all other federal agency contracts during the two preceding fiscal years.

(8) The total dollar amount and percentage of subcontract awards made to all SDB firms under DoD contracts and other Federal Agency contracts during the two preceding fiscal years (show DoD subcontract awards and other Federal agency subcontract awards separately.) If presently required to submit a SF 295, provide copies of the two preceding year's end report.

(9) The number and total dollar amount of subcontract awards made to the identified protege firm(s) during the two preceding fiscal years (if any). Show DoD subcontract awards and other Federal agency subcontract awards separately.

c. In addition to the information required by B above companies must submit the following information for each proposed mentor-protege relationship:

(1) Information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities for the protege firm, including subcontracting opportunities in industry categories where SDBs are not dominant in the company's vendor base.

(2) A letter of intent indicating that both the mentor firm and the protege firm will negotiate a mentor-protege agreement. The letter of intent must be signed by both parties and contain the following information:

(a) The name, address and phone number of both parties.

(b) The protege firm's business classification, based upon the SIC code(s) which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

(c) A statement that the protege firm meets the eligibility criteria in IV A (1)–(3).

(d) A preliminary assessment of the developmental needs of the protege firm and the proposed developmental assistance the mentor firm envisions providing the protege firm to address those needs and enhance the protege firm's ability to perform successfully under contracts or subcontracts with DoD, other federal agencies and commercial contracts.

(e) An estimate of the dollar amount of subcontracts that will be awarded by the mentor firm to the protege firm.

(f) Information as to whether the protege firm's development will be concentrated on a single major system(s), a service or supply program, research and development programs, initial production, mature systems, or in the mentor firm's overall contract base.

(3) An estimate of the cost of the developmental assistance program.

D. A company that has identified developmental assistance funds to be made available through a DoD contract program manager(s), must provide: (1) The information in B and C above to both the USD(A) OSADBU and the appropriate program manager(s) and (2) the USD(A) OSADBU with a letter signed by the appropriate program manager indicating the amount of funding that has been identified for the developmental assistance program.

E. Companies seeking credit only, or reimbursement through a DoD contract only, shall submit four copies of the information specified in B and C above to: DoD, USD(A)/OSADBU, room 2A340, The Pentagon, Washington, DC 20301–3061, Attn: Pilot Mentor-Protege Program Application. Upon receipt of this information, OSADBU will review and evaluate each request and, to the maximum extent possible, within 30 days advise each applicant of approval or rejection of its request to become a mentor firm.

F. A company approved as a mentor firm for credit only or reimbursement through a DoD contract, shall proceed with the negotiation of the mentor-protege agreement with the identified protege firm(s).

G. Companies that are not approved for participation under the Program will be provided the reasons therefor and will also be provided an opportunity to submit additional information for reconsideration.

H. A company may not be approved for participation in the Program as a mentor firm if at the time of requesting participation in the Program it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR part 9.4.

I. If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm:

(1) May continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed to take credit for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Shall promptly give notice of its suspension or debarment to its protege firm and OSADBU.

VII. Mentor-Protege Agreements

A. Subsequent to approval as a mentor firm, a signed mentor-protege agreement for each mentor-protege relationship identified under VI(B)(2), must be submitted to USD(A) OSADBU for approval before developmental assistance costs may be reimbursed through a DoD contract or credited against SDB subcontracting goals. To the maximum extent possible, such mentor-protege agreements will be approved within 5 business days of receipt.

B. Each signed mentor-protege agreement submitted for approval under the Program shall include:

(1) The name, address and telephone number of the mentor firm and the protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that at the time the agreement is submitted for approval, the protege firm does not exceed the size standard for the appropriate SIC code.

(3) A developmental program for the protege firm specifying the type of assistance identified in (F) below that will be provided. The developmental program shall also include the following:

(a) Factors to assess the protege firm's developmental progress under the Program including milestones for providing the identified assistance and;

(b) The anticipated number and type of subcontracts to be awarded the protege firm consistent with the nature of mentor firm's business.

(4) A program participation term for the protege firm which shall not exceed five years and may be renewed for four years.

(5) Procedures for the mentor firm to notify the protege firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program.

(6) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement.

(7) Procedures for the mentor firm to terminate the mentor-protege agreement for cause which provide:

(a) The protege firm shall be furnished a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination.

(b) The protege firm shall have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program.

(c) Upon prompt consideration of the protege firm's response, the mentor firm shall either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination.

(d) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this

section, shall be final and is not reviewable by DoD.

(8) Procedures for the termination of individual elements of developmental assistance.

(9) Additional terms and conditions as may be agreed upon by both parties.

C. A copy of any termination notices shall be sent by the mentor firm to the DoD, USD(A) OSADBU, and where funding is made available through a DoD contract, also to the appropriate PCO or ACO.

D. Termination of a mentor-protege agreement shall not impair the obligations of the mentor firm to perform pursuant to the contractual obligations under government contracts and subcontracts. Termination of all or part of the mentor-protege agreement shall not impair the obligations of the protege firm to perform pursuant to the contractual obligations under any contract awarded to the protege firm by the mentor firm.

E. Only developmental assistance provided after the DoD approval of the mentor-protege agreement may be reimbursed through a DoD contract(s) or credited against SDB subcontracting goals.

F. The mentor-protege agreement may provide for the mentor firm to furnish any or all of the types of developmental assistance as follows:

(1) Assistance by mentor firm personnel in:

(a) General business management including organizational management, financial management and personnel management, marketing, business development and overall business planning;

(b) Engineering and technical matters such as production inventory control, quality assurance and

(c) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Award of subcontracts under DoD contracts or other contracts on a non-competitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100% of the costs incurred by the protege firm for the performance of the subcontract. Provision of progress payments by a mentor firm to a protege firm at a rate other than the customary rate for small disadvantaged businesses shall be implemented in accordance with FAR 32.504(c).

(4) Advance Payments under such subcontracts. Advance payments must be administered by the mentor firm in accordance with FAR 32.4.

(5) Loans.

(6) Investment(s) in the protege firm in exchange for an ownership interest in the protege firm, not to exceed 10% of the total ownership interest. Investments may include but not be limited to cash, stock, contributions in kind, etc.

(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following:

(a) Small Business Development Centers (SBDC) established pursuant to section 21 of the Small Business Act (15 U.S.C. 648).

(b) Entities providing procurement technical assistance pursuant to chapter 142 of Title 10 U.S.C. (Procurement Technical Assistance Centers).

(c) Historically Black Colleges and Universities as defined 34 CFR part 608.2.

(d) Minority Institutions of Higher Education.

G. A mentor firm may not require a SDB concern to enter into a mentor-protege agreement as a condition for being awarded a contract by the mentor firm including a subcontract under a DoD contract awarded to the mentor firm.

VIII. Reimbursement Procedures

A. A mentor firm may only be reimbursed for the cost of developmental assistance incurred by the mentor firm and provided to a protege firm under VII (F) (1) and (7), and pursuant to an approved mentor-protege agreement. Reimbursement shall only be made through a separately priced cost reimbursement contract line item added to a DoD cost reimbursement contract. No other means for the reimbursement of the costs of developmental assistance provided under VII (F)(1) and (7) are authorized under the Program.

B. Assistance provided in the form of progress payments in excess of the customary progress payment rate for SDBs, shall only be reimbursed if implemented in accordance with FAR 32.504(c).

C. Assistance provided in the form of advance payments shall only be reimbursed if they have been provided to a protege firm under subcontract terms and conditions similar to FAR 52.232-12. Reimbursement of any advance payments shall be made pursuant to the inclusion of DFAR 252.232-7008, "Reimbursement of Advance Payments—DoD Pilot Mentor-Protege Program (October, 1991)" in appropriate contracts. In requesting reimbursement, the mentor firm agrees that the risk of any financial loss due to the failure or inability of a protege firm to repay any unliquidated advance payments shall be the sole responsibility of the mentor firm.

D. No other forms of developmental assistance are authorized for reimbursement under the Program.

E. No profit may be associated with the reimbursement of developmental assistance costs under the Program.

IX. Credit for Unreimbursed Developmental Assistance Costs

A. Developmental assistance costs incurred by a mentor firm for providing such assistance to a protege firm pursuant to an approved mentor protege agreement, which would otherwise be reimbursed under VIII (A), in the absence of available funding may not be reimbursed under any other DoD contract. However, except as provided in E below, such costs shall be recognized for credit in lieu of subcontract awards for determining the performance of such mentor firm in attaining a SDB subcontracting goal(s) established under:

(1) a DoD contract; or

(2) Any division wide or company wide subcontracting plan which the mentor firm has negotiated with DoD or another Executive agency.

B. The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs shall be equal to:

(1) Four times the total amount of such cost attributable to assistance provided by SBDCs, HBCUs, MIs, and PTACs.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

C. A mentor firm shall receive credit toward the attainment of a SDB subcontracting goal(s) for each subcontract awarded for a product or a service by the mentor firm to a business concern that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if:

(1) The size of such business concern is not more than two times the appropriate size standard;

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause; and

(3) The credit is taken not later than October 1, 1999.

D. Amounts credited toward the SDB goal(s) for unreimbursed costs under the program shall be separately identified from the amounts credited toward the

goal resulting from the award of actual subcontracts to protege firms. The combination of the two shall equal the mentor firm's overall accomplishment toward the SDB goal(s).

E. Adjustments may be made to the amount of credit claimed under A and B above if the Director, DoD, USD(A)/OSDBU determines that:

(1) A mentor firm's performance in the attainment of its SDB subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause.

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for mentor firm's participation in the Program.

F. The mentor firm shall be afforded the opportunity to explain the decline in SDB participation before imposition of any such limitation on credit. In making the final decision to impose a limitation on credit, the following shall be considered:

(1) the mentor firm's overall SDB participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the two fiscal years prior to the firm's admission to the Program;

(2) the mentor firm's aggregate prime contract awards during the prior two fiscal years and the total amount of subcontract awards under such contracts; and

(3) such other information the mentor firm may wish to submit.

G. The decision of the Director regarding the imposition of a limitation on credit shall be final.

H. Any prospective limitation on credit imposed by the Director shall be expressed as a percentage of otherwise eligible credit and shall apply beginning on a specific date in the future and continue until a date certain during the current fiscal year.

I. Any retroactive limitation on credit imposed by the Director shall reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed.)

J. For purposes of calculating any incentives to be paid to a mentor firm for exceeding a SDB subcontracting goal pursuant to 252.219–7009, incentives shall only be paid of a SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs.

K. Unreimbursed developmental assistance costs that are incurred pursuant to an approved mentor-protege agreement shall not be charged to, or otherwise reimbursed under any other DoD contract, irrespective of whether they have been recognized for credit against SDB subcontracting goals.

L. Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices.

X. Advance Agreements on the Treatment of Development Assistance Costs

Pursuant to FAR 31.109, approved mentor firms seeking reimbursement, credit, or a combination thereof, are encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.705. The purpose of the advance agreement is to establish the accounting treatment of the costs of the development assistance pursuant to the mentor-protege agreement prior to the incurring of any costs by the mentor firm. While not mandatory, an advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and address the need for any changes to their cost accounting practices that may result from the implementation of a mentor-protege agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed, credited or a combination thereof.

XI. Reporting Requirements and Program Reviews

A. Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually, including an attachment to their SF 295 providing:

(1) The number of active mentor-protege agreements in effect; and

(2) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, any problem areas encountered, and any other appropriate information.

(3) A copy of the SF 294 for each contract where developmental assistance was credited, with a statement in Block 18 identifying:

(a) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program; and

(b) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s).

(c) The number and dollar value of subcontracts awarded to the protege firm(s).

B. For companies participating in the DoD "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans", indicate in Block 16 of the SF 295:

(1) The total dollars credited to the SDB goal as a result of developmental assistance provided to a protege firm(s) under the Program.

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

C. OSADBU will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

XII. Definitions

A. *Emerging SDB Concern* means a small disadvantaged business whose size is no greater than 50% of the numerical size standard applicable to the industrial code for the supplies or services which the protege firm provides or would provide to the mentor firm.

B. *Minority Institution of Higher Education* means an institution of higher education with a student body that reflects the composition specified in 312(b) (3), (4) and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4) and (5).

Horace J. Crouch,

Director, Small and Disadvantaged Business Utilization.

[FR Doc. 91–18705 Filed 8–8–91; 8:45 am]

BILLING CODE 3801–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 219, 232, and 252

Acquisition Regulations; Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has revised the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a pilot Mentor-Protege Program, as provided by the National Defense Authorization Act for Fiscal Year 1991. This Program authorizes incentives for DoD contractors which provide developmental assistance to small disadvantaged businesses (SDBs).

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, Defense Acquisition Regulations System, OUSD (A) DP, Pentagon, Washington, DC 20301–3000.

SUPPLEMENTARY INFORMATION:

A. Background

Section 831, Public Law 101–510, enacted November 5, 1990 provides for the establishment of a pilot "Mentor-Protege Program." This Program authorizes incentives for DoD contractors which provide developmental assistance to small disadvantaged businesses (SDBs).

Participation in the Program is voluntary. Prospective mentor firms must apply to and be approved by the Department of Defense's Office of Small and Disadvantaged Business Utilization, OUSD (A) SADBU. Prospective protege firms are selected by mentor firms.

DoD implementation of section 831 is addressed in a DoD policy statement, entitled: "DoD Policy for the Pilot Mentor-Protege Program." The policy statement addresses the Program's purpose, procedures, duration, eligibility requirements, approval process, and Mentor-Protege Agreements. The DFARS revisions in this final rule are based on the DoD policy statement.

B. Regulatory Flexibility Act

This rule was published for public comment on May 2, 1991 (56 FR 20322). The comments that were received were considered in development of the final rule. A Final Regulatory Flexibility Analysis has been prepared and forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the Regulatory Flexibility Analysis are available upon written request. Please cite DAR Case 90–314 and submit the request to: Defense Acquisition Regulations System, OUSD (A) DP, ATTN: Mrs. Alyce Sullivan, Pentagon, Washington, DC 20301–3000.

C. Paperwork Reduction Act

This rule contains information collection requirements which increase the estimates for the Standard Form 295, Summary Subcontract Report, which is currently approved under OMB Clearance Number 9000–0007. Accordingly, a revised burden estimate has been prepared and forwarded to the Office of Management and Budget (OMB) for clearance.

List of Subjects in 48 CFR Parts 219, 232, and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219, 232, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 219, 232, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.708 [Amended]

2. Section 219.708 is amended by adding a third sentence to paragraph (c)(1) (S–70) to read as follows: "Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit under the Pilot Mentor-Protege Program (see subpart 219.71)."

3. Subpart 219.71 is added to read as follows:

Subpart 219.71—Pilot Mentor-Protege Program

Sec.

219.7100 Scope.

This subpart implements the Pilot Mentor-Protege Program (the Program), established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended. The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 Policy.

DoD policy for implementation of the Program is contained in a policy statement entitled, "DoD Policy for the Pilot Mentor-Protege Program." This statement addresses the program purpose, general procedures, duration, eligibility requirements, the selection/approval process, the mentor-protege agreement, advance agreements on the treatment of developmental assistance costs, and reporting requirements. A copy of the statement may be obtained from the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition, OUSD (A) SADBU, room 2A340, The Pentagon, Washington, DC 20301–3061, (703) 697–1688.

219.7102 General.

The Program consists of:

(a) Mentor firms, which are prime contractors with at least one active subcontracting plan negotiated under FAR subpart 19.7

(b) Protege firms, which are small disadvantaged business (SDB) concerns, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements which establish a developmental assistance program for a protege firm.

(d) Incentives, which may be provided to mentor firms by the DoD including:

(1) Reimbursement for developmental assistance costs through a modification to an existing cost reimbursement contract to establish a separately priced contract line item;

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR subpart 19.7, for developmental assistance costs not reimbursed; or

(3) A combination of reimbursement and credit.

219.7103 Procedures.

219.7103–1 General.

(a) In accordance with the DoD policy statement, a prospective mentor firm shall:

(1) Apply to OUSD(A) SADBU when seeking credit only or when funding is made available from a DoD program manager to implement a mentor-protege agreement; and

(2) Subsequent to approval as a mentor firm, submit a signed mentor-protege agreement to OUSD(A) SADBU for approval before developmental assistance costs may be reimbursed through an existing DoD contract or credited against SDB subcontracting goals.

(b) OUSD(A) SADBU shall have responsibility for:

(1) Approving contractors as mentor firms;

(2) Approving mentor-protege agreements; and

(3) Forwarding the approved mentor-protege agreement to contracting officer(s) when program funding is available through a DoD program manager.

219.7103-2 Contracting officer responsibilities.

Contracting officers shall:

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for credit, reimbursement, or both, if the mentor firm proposes such an agreement, or delegate this authority to the administrative contracting officer (See FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232-7008, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments are provided by a mentor firm to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c), if such payments are provided by a mentor firm to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs when—

(1) Funds have been made available for that purpose by a DoD program manager; and

(2) The contractor has an approved Mentor-Protege Agreement.

(e) Advise contractors of reporting requirements (see 219.7106).

219.7104 Developmental assistance costs eligible for reimbursement or credit under the program

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices. The following costs incurred by mentor firms are eligible for reimbursement or credit:

(1) Assistance to the protege firm by mentor firm personnel in—

(i) General business management including organizational management;

(ii) Financial management;

(iii) Personnel management;

(iv) Marketing;

(v) Business development and overall business planning;

(vi) Engineering and technical matters such as production, inventory control, and quality assurance;

(vii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Assistance to the protege firm provided by—

(i) Small Business Development Centers established pursuant to section 21 of the Small business Act (15 U.S.C. 648);

(ii) Entities providing technical assistance pursuant to chapter 142 of Title 10 U.S.C.;

(iii) Historically Black Colleges and Universities (HBCUs) as defined by 34 CFR part 608.2; and

(iv) Minority Institutions of Higher Education with a student body as specified in 20 U.S.C. 1058(b) (3), (4), and (5).

(b) No profit may be associated with the reimbursement of developmental assistance costs.

(c) Before incurring any costs under the Program, mentor firms need to establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, costs must be incurred before October 1, 1996.

(d) If a mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(e) Developmental assistance costs incurred before October 1, 1999 by a mentor firm pursuant to an approved mentor-protege agreement, that are not funded either directly or indirectly under any other DoD contract, may be credited towards subcontracting plan goals as follows:

(1) Four times the total amount of developmental assistance costs provided to protege firms by small business development centers, HBCUs, MIs, and entities providing technical assistance (see paragraph (a)(2) of this section);

(2) Three times the total amount of developmental assistance costs incurred by mentor firm personnel (see paragraph (a)(1) (i) through (vi) of this section); or

(3) Two times the total amount of other developmental assistance costs (see paragraph (a)(1)(vii) of this section).

219.7105 Other forms of assistance.

(a) Mentor firm subcontracts with protege firms may contain provisions for progress payments up to 100 percent (see FAR 32.504(c)) or advance payments (see 232.412(S-72)). However, DoD will reimburse the mentor firm for advance payments only when such payments have been provided under subcontract terms and conditions similar to FAR 52.232-12, Advance Payments.

(b) In accordance with paragraph (f) of section 831 of Public Law 101-510, mentor firms may award subcontracts to protege firms on a non-competitive basis under DoD or other contracts.

219.7106 Reporting.

(a) Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually by including with their SF 295, Summary Subcontract Report:

(1) An attachment which identifies—

(i) The number of active mentor-protege agreements in effect; and

(ii) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, and problem areas encountered, and any other appropriate information; and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 18 of the SF 294 identifying:

(i) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program;

(ii) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s); and

(iii) The number and dollar value of subcontracts awarded to the protege firm(s).

(b) Mentor firms, which are also participants in DoD's comprehensive subcontracting plan test program (see 219.702(a)), shall indicate in Block 16 of the SF 295, Summary Subcontract Report:

(1) The total dollars credited to the SDB goal as a result of developmental assistance provided a protege firm(s) under the Program; and

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

(c) OUSD(A) SADBU will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

PART 232—CONTRACT FINANCING

4. Section 232.412 is amended by adding paragraph (S–72) to read as follows:

232.412 Contract Clause.

* * * * *

(S–72) In the event that advance payments are provided by a prime contractor to a subcontractor pursuant to an approved Mentor-Protege Agreement (see subpart 219.71) and the prime contractor requests reimbursement of advance payments, use the clause at 252.232–7008, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.232–7008 is added to read as follows:

252.232–7008 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.

As prescribed in 232.412(S–72), use the following clause:

Reimbursement of Subcontractor Advance Payments—DOD Pilot Mentor-Protege Program (Oct 1991)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a small disadvantaged business, as a protege firm, pursuant to an approved mentor-protege agreement, provided that:

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232–12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1195, Request for Progress Payments, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1195 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

[End of clause]

[FR Doc. 91–18706 Filed 8–8–91; 8:45 am]

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federal register

Friday
August 9, 1991

Part IV

Federal Deposit Insurance Corporation

12 CFR Part 308

Uniform Rules of Practice and Procedure; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064-AA64

Uniform Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183 (1989), requires that the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board of Governors"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") (collectively, the "Agencies") develop a set of uniform rules of practice and procedures for administrative hearings ("Uniform Rules"). Section 916 further requires that the agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

In compliance with the mandate of section 916, this final rule makes uniform those rules concerning formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the FDIC and each of the other listed Agencies is adopting complementary "Local Rules" to supplement the Uniform Rules in order to address some or all of the following: Formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within the FDIC and the other Agencies. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy L. Alper, Counsel, Compliance and Enforcement Section, telephone 202/898-3720, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 916 of FIRREA requires that the FDIC, OCC, Board of Governors, OTS and NCUA develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt.1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

To comply with the requirements of section 916, the FDIC and the other Agencies issued for public notice and comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rules contained one set of Uniform Rules applicable to the Agencies and separate Local Rules applicable to each agency.

The FDIC has received comments on the joint proposed rule and is now issuing a final rule. This final rule is intended to standardize procedures for formal administrative actions common to at least four of the five Agencies and to facilitate administrative practice before the Agencies.

II. Comments and Discussion

A. Comment Summary

In response to the June 17, 1991, joint notice of proposed rulemaking, the FDIC and the other Agencies received three comment letters on its June 17, 1991 proposed rule. The Agencies have reviewed jointly the portions of the comments concerning the Uniform Rules. Overall, while the comments raised certain questions and objections, given the magnitude of the regulation the comments were focused narrowly. One comment commended the Agencies for meeting the mandate of section 916 of FIRREA and creating a set of uniform rules of practice and procedures. The specific questions and objections are discussed below.

B. Discussion of Comments and Agency Responses

1. Uniform Rules

(a) One commenter criticized the proposed rule for failing to accommodate default situations where good cause could be shown for the failure to file an answer. This comment reflects a misunderstanding of the proposed Uniform Rules, which address such situations by allowing an administrative law judge to extend time limits for good cause (§ 308.13), and by requiring that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 308.19), thereby permitting respondents an opportunity to oppose such a motion. To alleviate confusion, the wording of the final default rule has been modified to make this process more explicit.

(b) Another issue raised by one of the commenters concerns the apparent differences in procedures for formal investigations, rules of practice before the Agencies, and rules concerning the Equal Access to Justice Act. Additionally, this commenter proposed that rules should be drafted governing informal enforcement mechanisms, such as memoranda of understanding, "fifteen-day letter" procedures for initiation of civil money penalties, commitment letters and other informal procedures. Finally, the commenter made a suggestion that the Agencies consider other rules to promote uniformity such as the publication of all enforcement decisions of the Agencies in a loose-leaf service or on-line computer service.

The differences in the various informal or non-APA procedures are based upon the scope of section 916. The purpose behind section 916 of FIRREA was the improvement and expedition of formal administrative proceedings to be conducted pursuant to the Administrative Procedure Act. As was stated in the Report of the House of Representatives, this statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for *formal enforcement proceedings*." (Emphasis supplied.) 1 CFR 305.87-12. Thus, the inclusion of non-APA proceedings would exceed the statutory mandate of section 916 and would present practical implementation problems as well.

For example, the Uniform Rules do not contain provisions for formal investigations. This is because they are not APA proceedings. In addition, the statutory authority for formal

investigations arises in several statutes, not just the Federal Deposit Insurance Act, and the Agencies have differing policies concerning the frequency, length, and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency.

Similarly, the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Again, the diversity of agency structure is a determining factor here. Both the OCC and the OTS are bureaus of the U.S. Department of Treasury. As such, they are subject to Treasury's Equal Access to Justice Act regulatory provisions found at 31 CFR part 6.

With respect to the publication of enforcement orders, the Agencies have already addressed this concern. Pursuant to section 8(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(u), each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Rooms or libraries of each Agency. In addition, each of the Agencies frequently issues press releases concerning recent cases.

(c) An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted generally; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. See, *Sims* v. *National Transportation Safety Board*, 662 F.2nd 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *N.L.R.B.*, 576 F.2nd 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm.*, 549 F.2nd 28, 33 (7th Cir. 1977). Further, the Administrative Procedure Act contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2nd 205 (3rd Cir. 1974,) *cert. denied*. 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2nd 1278, 1285 (DC Cir. 1979).

The Agencies attempted to strike a balance between the due process interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and public constituencies which each Agency serves, as well as each Agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity and quantity of enforcement actions brought by each Agency; the methods of litigation and opportunity for settlement in such actions; the structure and available resources of each regulator; and the supervisory procedures developed internally by each Agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experiences of the OCC, the Board of Governors and the OTS resulted in a finding that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing complexity of enforcement actions, where there were typically multiple counts and multiple parties and where several types of enforcement actions were combined into one, it was found that discovery depositions could be useful in aiding both respondents and the regulator in resolving cases expeditiously. Discovery depositions for the OCC, Board of Governors and the OTS, however, are limited to witnesses that have factual, direct and personal knowledge of the matters at issue and expert witnesses. The FDIC and the NCUA determined that the interests of respondents in further pretrial disclosure in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document intensive nature of their proceedings.

(d) A commenter suggested that the definition of "decisional employee" in proposed rule § 308.3(3) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter stated that this expansion would protect against bias or conflict of interest.

This suggested amendment is not adopted because the final rules incorporate the formulation of the Administrative Procedure Act. The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress already has drawn the line defining conflicts of interest in this context, and the Agencies find no basis for modification.

(e) A recommendation was made that § 308.18(b) should be modified to require that an agency set forth in a notice not only those facts showing that an agency is entitled to relief of some kind but also those facts required for the particular relief requested.

With respect to the comment concerning the amount of particularity with which a notice should be pleaded, the Agencies believe that § 308.18(b) meets those standards for notice pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this is sufficient pleading for administrative proceedings. See *First National Monetary Corporation* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corporation* v. *Federal Trade Commission*, 498 F.Supp. 772, 780 (D.Del.1980).

(f) One commenter suggested that the proposed rules regarding severance of proceedings are unduly stringent in light of the severity of sanctions at stake. The commenter argued that any inconsistency or conflict in the positions of respondents should warrant severance without the necessity of weighing any countervailing interests. The commenter further argued that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

This suggestion was not adopted. A similar weighing test for severance is applied by federal courts in criminal cases, *see, e.g., Roach* v. *National Transportation Safety Board*, 804 F 2d 1147, 1151 (10th Cir. 1986), *cert. denied*, 496 U.S. 1006 (1988), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the total volume of adjudications at any particular time.

(g) Uniform Rules § 308.24(c) provides that privileged documents are not discoverable. One commenter objected to the right of Enforcement Counsel to assert the deliberative process privilege on the grounds that, in some instances, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The

commenter suggested, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that Uniform Rule 308.24 should provide for in camera inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege already are available to respondents without § 308.24. Section 308.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that grounds exist to challenge Enforcement Counsel's assertion of the deliberative process privilege, respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of Enforcement Counsel as to the basis of the assertion of the privilege, to conduct an inspection of the assertedly privileged material in camera, and to then rule whether the privilege can be maintained.

(h) One commenter suggested that the determination to seal a document pursuant to § 308.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It also was proposed that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate the latter concern of the commenter by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) vests the Agencies with exclusive authority to seal all or a part of a document if disclosure would be contrary to the public interest. Thus, the Agencies disagree with the commenter that this determination should be subject to review by the administrative law judge.

(i) One commenter suggested the deletion of § 308.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree with the commenter. The first sentence of § 308.36(c)(2) cross-references § 308.36(a), which makes agency prepared documents subject to the same evidentiary standards as those that are applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies feel that requiring a sponsoring witness for such documents needlessly consumes judicial resources and impedes the hearing process.

(j) One commenter stated that, under § 308.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to the administrative law judge's recommended decision and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 308.39(b)(2) is amended to read that "No exception *need* be considered * * *." (Emphasis added.)

The Agencies do not agree with the commenter that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

2. Local Rules

(a) One commenter objected to the FDIC's having informal hearings in three types of proceedings—change-in-control applications filed pursuant to 12 U.S.C. 1817(j), section 32 notifications filed pursuant to 12 U.S.C. 1831i, and section 19 applications filed pursuant to 12 U.S.C. 1829—and also objected to the allocation of the burden of proof to the applicants.

Proceedings such as these involve various types of applications. [With respect to change-in-control applications it should be noted that the commenter was not correct in referring to the hearing provided in this type of action as informal. Hearings in change-in-control proceedings are formal APA hearings. See 12 U.S.C. 1817(j)(4).] Section 556(d) of the APA (5 U.S.C. 556(d)), states "Except as otherwise provided by statute, the proponent of the rule or order has the burden of proof." Courts have interpreted this section as imposing the burden of proof in licensing or applications cases upon the applicant. *See Savage* v. *Commodity Futures Trading Commission*, 548 F.2d 192 (7th Cir. 1977). The FDIC has adopted this position in *In the Matter of Peder D. Sletteland*, 2 P–H FDIC Enf. Dec. & Ord. ¶ 5152, at p. A–1518. Accordingly, the FDIC has determined that in these proceedings the applicant shall bear the ultimate burden of persuasion while the FDIC has the burden of going forward with a *prima facie* case.

(b) One commenter filed his comment with the FDIC after the comment period had closed. The comment raised the issue of discovery depositions and the FDIC's position on the matter. As stated above, the FDIC has experiences that differ from those of the OCC, the Board of Governors and the OTS. The FDIC's proceedings are document intensive and rely heavily upon detailed Reports of Examination which are available through document discovery. The basis of an FDIC enforcement action is thoroughly revealed during the examination process at meetings and in correspondence with an institution's board of directors. Accordingly, the FDIC concluded that the Uniform Rules accord adequate due process to respondents in the form of pretrial submissions, document discovery, the exchange of proposed trial exhibits, proposed stipulations, and witness lists, including a summary of the expected testimony of each witness.

C. Additional Modifications to the Uniform Rules and the Local Rules

In conjunction with the other Agencies, the FDIC is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the FDIC and its operations. Thus, the FDIC is replacing the terms "Agency Head" and "Agency" with "Board of Directors" or "Board" and "FDIC", respectively, and is restricting the "scope" provisions of § 308.01 to those statutes subject to FDIC jurisdiction. Further conforming

changes have been made to the definitions of Local Rules, Uniform Rules, and Office of Financial Institution Adjudication ("OFIA"). Thus, the FDIC has moved the definitional provisions set forth in § 308.100 of the Local Rules to § 308.03, the definition section of the Uniform Rules. The other Agencies have made similar changes. The purpose of these changes is to make the Uniform Rules easier to understand and use. These changes do not affect the substance of the Uniform Rules.

The FDIC is making various other technical and conforming changes to the Uniform and Local Rules to improve the clarity and consistency of the rules, as well as to make amendments to conform to the recent decision handed down by the United States Court of Appeals for the Fifth Circuit, *Amberg* v. *FDIC*, 934 F.2d 681 (5th Cir. 1991). Thus, to ensure consistency of administration, those sections which provide for a waiver of a hearing if an applicant fails to file an answer or request a hearing have been amended to provide the same procedures as in § 308.19(c) of the Uniform Rules. The FDIC believes that these changes adequately address those issues raised in *Amberg*.

III. Rationale for Expedited Publication

The Board of Directors is adopting this regulation effective upon publication in the Federal Register, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of a substantive regulation not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). See *Central Lincoln Peoples' Utility Dist.* v. *Johnson*, 735 F.2d 1101, 1117 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. See *Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 881–888 (3rd Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be impracticable and contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the five Agencies to (1) establish their own pool of administrative law judges and (2) develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act [August 9, 1989]." In order to properly address these two requirements, the Uniform Rules and the administrative law judge pool should be implemented in a coordinated and harmonious fashion. If the pool is established prior to the rules, the administrative law judges may be required to adjudicate some cases under prior regulations before the Uniform Rules are effective. The result would be confusion for parties and a lack of uniformity in adjudication directly contrary to the purpose of section 916. It would, therefore, be impracticable and contrary to the public interest to delay the effective date for implementation of the Uniform Rules.

IV. Applicability of Revised Rules to Enforcement Proceedings

Part 308, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of Part 308 applies to any proceeding commenced prior to August 9, 1991 unless, with the consent of the administrative law judge or the Board of Directors, the parties agree to have the proceeding governed by revised part 308.

V. Section-by-Section Summary and Discussion

Subpart A—Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, including rules on commencing enforcement proceedings, filing and service of papers, motions, discovery, depositions, prehearing conferences, public hearings, hearing subpoenas, conflict of interest, ex parte communication, rules of evidence, and post-hearing procedures.

Subpart B—General Rules of Procedure

As stated above, in amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the FDIC and its operations, the FDIC has deleted § 308.100 which contained definitions and moved the definitions to § 308.03 of the Uniform Rules.

Section 308.101, "Scope of Local Rules," makes clear that the rules contained in subpart A, "Uniform Rules", and subpart B, "General Rules of Procedure", of part 308 do not apply to subparts D through P of part 308 unless specifically provided. Subpart C, "Rules of Practice Before the FDIC and Standards of Conduct" shall apply to any proceeding initiated by the FDIC under part 308.

Section 308.102, "Authority of Board of Directors and Executive Secretary", makes explicit that the Board may perform, direct the performance of, or waive the performance of any act which could be done or ordered by the Executive Secretary. This is in addition to the power to do such with regard to any act that could be performed by the administrative law judge. The rule provides that the Executive Secretary shall have the ability to act in place of the administrative law judge but may not hear a case on the merits or make a recommended decision.

Section 308.103, "Appointment of administrative law judge", contains the procedures by which the appointment of an administrative law judge will be accomplished. It provides that all hearings within the scope of part 308 shall be held before an administrative law judge of OFIA unless the Board directs otherwise, or unless the Local Rules specifically provide to the contrary. The Executive Secretary shall immediately upon the issuance of a Notice, refer a proceeding to OFIA for the appointment of the administrative law judge. OFIA shall then advise the parties when a judge has been appointed. This differs from current practice insofar as an administrative law judge is not now appointed until after a respondent requests a hearing or files an answer. It also reflects the establishment of OFIA as the appointing body rather than the Executive Secretary.

Sections 308.104 and 308.105 address housekeeping matters concerning maintenance of the record and the filing of papers. Section 308.104, "Filing with the Board of Directors", makes clear that any papers required to be filed with the Board should be filed with the Executive Secretary at the stated address. Such filings include the record in the case which is to be filed with the Executive Secretary following the issuance of a recommended decision; the recommended decision filed by the administrative law judge after a motion for summary disposition; referrals by the administrative law judge to the Board for interlocutory review; motions filed by the parties after the record has been certified to the Board; exceptions and requests for oral argument; and any other papers required to be filed with the Board under part 308. This reflects the approach stated in § 308.105, that the Executive Secretary will be the official custodian of the record in a case, except when the administrative law judge has jurisdiction over the case.

Section 308.105, "Custodian of the record", makes clear that the Executive Secretary is the official custodian of the record at all times during which the administrative law judge does not have jurisdiction in the case.

Section 308.106, "Written testimony in lieu of oral hearing", preserves current practice at the FDIC, which authorizes hearings in which most, or all, of the direct testimony is presented in written form. Absent objection by a party, the administrative law judge may order that the parties present their cases in chief and rebuttal in the form of exhibits and written statements sworn to by the witness offering the evidence. Any such order shall also allow any party to call adverse witnesses or parties to testify orally, and shall provide for a right to cross examination. Written testimony on direct, exhibits, and rebuttal are to be simultaneously submitted by the parties. The failure of any party to submit written testimony pursuant to such an order is deemed to be a waiver of that party's right to present evidence, except the testimony of a previously identified hostile witness or adverse party. A party's failure to present rebuttal evidence in written form, if not so specifically ordered, is not waived by that party's failure to file written testimony. Late filings may be allowed and accepted only for good cause shown.

Section 308.107, "Document discovery", provides that unless expressly provided in specific subparts, discovery may be had only through the production of documents, and no other form of discovery shall be allowed. Questioning of persons providing documents pursuant to a subpoena shall be limited to the identification of such documents and a reasonable examination as to whether such person conducted an adequate search for and produced all subpoenaed documents. This is the current practice of the FDIC.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

Section 308.108, "Sanctions," is included in revised subpart C to make clear that administrative law judges and the Board of Directors have authority to effectively deal with the significant problem of parties and their counsel failing to comply with the requirements of part 308 and/or with orders. Under § 308.108(a), sanctions may be imposed when any counsel or party has acted in a manner contrary to any applicable statute, regulation, or order, and the party's or counsel's conduct is contemptuous or has materially injured or prejudiced some other party.

Sanctions imposed in accordance with § 308.108(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Under § 308.108(c), dismissal of an action as a sanction for the failure to hold a hearing within the time period specified in part 308 or based upon the failure of an administrative law judge to render a recommended decision within the time period specified in part 308 may only be granted if the delay is solely the result of the conduct of the FDIC enforcement counsel, that conduct is unexcused, the moving respondent took all reasonable steps to oppose and prevent the delay, the respondent has been materially prejudiced or injured, and no lesser or different sanction is adequate.

Paragraph (d) of § 308.108 sets out the general procedure for the imposition of sanctions. The administrative law judge may impose sanctions on his or her own motion or at the request of any party. Prior to their imposition, all sanctions, except the refusal to accept late papers, require notice to the parties and opportunity for counsel or the party against whom sanctions would be imposed to be heard. The form that the opportunity to be heard shall take is largely left to the discretion of the administrative law judge. For example, the opportunity to be heard may be limited to an oral response immediately after the violative action or inaction is noted by the administrative law judge. Requests for, and the imposition of, sanctions are to be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge, i.e., in accordance with § 308.28 of the Uniform Rules.

Section 308.109, "Suspension and disbarment," authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.109 of the proposed regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board of Directors discretion to suspend and disbar under other circumstances.

Under § 308.109(a), the Board of Directors has the power to suspend or revoke an attorney's privilege of practicing before the FDIC based not only on a finding by the Board of Directors that the attorney engaged in contemptuous conduct before the agency, but also upon a finding that the attorney does not possess the requisite qualifications to represent others, is seriously lacking in integrity or has engaged in material unethical or improper professional conduct, or has engaged in or aided another in engaging in a material and knowing violation of the Federal Deposit Insurance Act ("FDIA"). The Board may suspend or revoke the privilege to practice before the FDIC on these grounds only after notice of and opportunity for a hearing.

Once suspended or disbarred from practice before the FDIC by the Board pursuant to § 308.109(a), a counsel may not make an application for reinstatement for at least one year, and thereafter, may make a new request for reinstatement no sooner than one year after the counsel's most recent reinstatement application. A counsel may be reinstated by the Board for good cause shown.

Under § 308.109(b) a party's counsel is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the OCC, the Board of Governors, the OTS, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past ten years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

Reinstatement after a suspension or disbarment under § 308.109(b) may be made by the Executive Secretary if all grounds for suspension are subsequently removed by a reversal of the conviction or termination of the underlying suspension or disbarment. An application for reinstatement under § 308.109(b) on any other grounds may be filed at any time not less than one year after the applicant's most recent application. Until the Board has reinstated the applicant for good cause shown, the suspension shall continue.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted

pursuant to this section shall be handled in the same manner as other hearings under this subpart C, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and provided that the Board of Directors may limit any such hearings to written submissions.

Finally, § 308.109(d) of the proposed regulations provides that any counsel found in contempt by the administrative law judge may be summarily suspended from participation in that proceeding.

Preamble to Subparts D–P

Subparts D–P contain rules and procedures that govern specific types of formal and informal proceedings conducted by the FDIC. Generally, revisions made to these subparts are either clarifying in nature, were made to bring the rules into compliance with the statutory provisions of FIRREA or the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 ("Crime Bill"), Public Law 101–647, 104 Stat. 4789 (1990), or were made to conform the subparts to, or avoid overlaps with, the Uniform Rules.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

Subpart D governs proceedings in connection with the disapproval of a proposed acquisition of control of an insured nonmember bank. Various changes to subpart D were made to make this subpart consistent with the Uniform Rules. A new section, § 308.114, was added to this subpart on procedures relating to disapproval of acquisition of control. That section provides that the person proposing to acquire control of an insured depository institution shall bear the ultimate burden of persuasion and that the FDIC has the burden of going forward with a *prima facie* case. This accords with section 556(d) of the APA (5 U.S.C. 556(d)), which states "Except as otherwise provided by statute, the proponent of the rule or order has the burden of proof." Courts have interpreted this section as imposing the burden of proof in licensing or applications cases upon the applicant. *See Savage* v. *Commodities Futures Trading Commission*, 548 F.2d 192 (7th Cir. 1977). The FDIC has adopted this position in *In the Matter of Peder D. Sletteland*, 2 P–H FDIC Enf. Dec. & Ord. ¶ 5152, at p. A–1518.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessments of Civil Penalties for Willful Violations of the Change in Bank Control Act

Subpart E governs proceedings relating to assessments of civil penalties for willful violations of the Change in Bank Control Act. This subpart has been revised in order to comply with the changes to these provisions made by FIRREA and to make this subpart consistent with the Uniform Rules.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

Subpart F governs proceedings for the involuntary termination of insured status. This type of action is to be conducted according to the Uniform Rules. Similar to the preceding subparts, this subpart has been changed to make the provisions conform with the changes to the FDIA made by FIRREA. This includes changing the time frames to correspond with those of FIRREA, substituting the term, "insured depository institution," for that of "insured bank" and describing the notification to primary regulator and the notice of intent to terminate insured status.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

Subpart G governs proceedings relating to cease-and-desist orders. The changes in subpart G were made for purposes of clarity and to make changes to the provisions as mandated by the amendments to the FDIA made by FIRREA.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

Subpart H governs proceedings relating to assessment and collections of civil money penalties for the violation of cease-and-desist orders and of certain Federal statutes. Several sections of old subpart H have been deleted as being redundant with provisions of the Uniform Rules, and other provisions, including those concerning call report penalties, have been added to reflect the changes made by FIRREA.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

Subpart I governs procedures for the imposition of sanctions upon municipal securities dealers or persons associated with them and clearing agencies or transfer agents. There have been minor modifications made in this subpart in order to make the provisions herein consistent with the Uniform Rules.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

Subpart J governs exemption proceedings under section 12(h) of the Securities Exchange Act. Like subpart I, there have been minor structural changes in order to make these provisions consistent with the Uniform Rules.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

Subpart K governs procedures applicable to investigations pursuant to section 10(c) of the FDIA. The provisions are designed to spell out the scope of the FDIC's authority under section 10(c) of the FDIA to conduct investigations of both open and failed insured banks, institutions making applications to become insured banks, and any other types of investigations. The provisions make specific certain of the procedures to be used during such investigations.

Section 308.144, "Scope," indicates that the FDIC's investigatory power under section 10(c) of the FDIA extends to both open and failed insured banks.

Section 308.145, "Conduct of investigation," has been modified to state that persons authorized to issue orders of investigation are set forth in part 303. The order of investigation indicates the purpose of the investigation and that the persons who authorized the investigation terminate it upon completion.

Section 308.146, "Powers of person conducting investigation," spells out the Board's authority to summarily suspend for contemptuous conduct any counsel representing a witness during the investigation. This section also has made explicit that the person conducting the investigation may obtain assistance from others both within and outside the FDIC.

Section 308.148, "Rights of witnesses," spells out that a witness is to be furnished with a copy of the order of investigation if the witness so requests.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

Subpart L governs proceedings for the disapproval of candidates for senior executive officer and director.

Modifications in this subpart include re-designating the appeal procedures in §§ 308.153 and 308.154 and labeling them "request for review," as well as making these provisions consistent with the Uniform Rules. Under § 308.155, an applicant is given an opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witnesses. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions on change-in-control proceedings in subpart D, the ultimate burden of persuasion in § 308.155(b) is imposed upon the candidate for director or senior executive officer for the same rationale, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

Subpart M governs proceedings for applications under section 19 of the FDIA. This subpart has been revised in order to comply with the changes to section 19 made by FIRREA and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, and to make this subpart consistent with the Uniform Rules. Section 308.158(b) of subpart M permits the filing of a section 19 application at any time more than one year after the issuance of a decision denying an application filed pursuant to section 19. Under § 308.160, an applicant is given an opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witness. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions for the change-in-control proceedings and the procedures for section 32 of the FDIA, the burden of proof in § 308.160(b) has been shifted to the applicant, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

Subpart N governs proceedings for suspension, removal, and prohibition pursuant to section 8(g) of the FDIA where a felony is charged. The changes in subpart N were made for purposes of clarity and to make changes to the provisions as mandated by the amendments to the FDIA made by FIRREA. Consistent with other proceedings in which a presiding officer makes recommended decisions to the Board of Directors, there is no discovery in proceedings conducted under this subpart.

Subpart O—Liability of Commonly-Controlled Depository Institutions

Subpart O is a new subpart of part 308 and governs proceedings pertaining to section 5(e) of the FDIA. The procedures set forth herein reflect those that have been used by the FDIC under current part 308 since the passage of section 5(e) of the FDIA.

Section 308.165, "Scope", states that, in addition to the procedures set forth in this subpart, the procedures in subpart B shall apply to proceedings in connection with the assessment of cross guaranty liability against commonly-controlled institutions. Section 308.166, "Grounds for assessment of liability", restates the statutory requirements for the assessment of liability.

Section 308.167, "Notice of assessment of liability", sets forth the matters that must be contained in the Notice of Assessment of Liability, including the basis for the FDIC's jurisdiction; a statement of the FDIC's good faith estimate of the amount of loss that it has incurred or anticipates incurring; a statement of the method used to calculate such loss; a proposed order directing the payment by the liable institution of the amount of loss and the schedule under which the payment will be due; and, in cases in which more than one liable institution is involved, each institutions's share of the liability. Furthermore, the Notice must advise the liable institution(s) that an answer and a request for a hearing must be filed within 20 days of the service of the Notice, and that failure to timely file a request for a hearing will render the Notice of Assessment a final and unappealable order. Finally, the Notice must state that, if a hearing is requested, such hearing will be held 120 days after service of the Notice in the judicial district where the liable institution is located; or in cases involving more than one liable institution, the hearing will be held in the judicial district in which at least one of the institutions is found. Section 308.168, "Effective date of and payment under an order to pay", makes clear that the payment of the assessed amount shall be due on or before the 21st day after service of the Notice of Assessment in accordance with the terms and schedule set forth therein. Where any Order to Pay has become final and unappealable by reason of default under § 308.19(c)—which provides that failure to request a hearing within the time limits provided by this subpart shall render the Notice of Assessment final and unappealable—payment shall automatically be deemed to have become due and payable upon service of the Order to Pay, or as otherwise stated therein. All payments collected under section 5(e) of the FDIA are to be paid to the FDIC.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

Subpart P governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504. The revisions to this subpart are minor and are made to make this subpart conform to the Uniform Rules.

VI. Regulatory Flexibility Act Statement

The Board of Directors certifies pursuant to section 605(b) of the Regulatory Flexibility Act, that this uniform rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Agencies already have in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact upon a substantial number of small entities.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, *Ex parte* communication, Hearing procedure, Penalties, State nonmember banks.

Authority and Issuance

For the reasons set forth in the preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is revised as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

Subpart A—Uniform Rules of Practice and Procedure

Subpart B—General Rules of Procedure

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

Subpart O—Liability of Commonly Controlled Depository Institutions

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

Authority: 12 U.S.C. 1815(e), 1817 (a) and (j), 1818, 1820, 1828(j), 1829, 1831i; 15 U.S.C. 78l(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o–4(c)(5), 78p, 78q, 78q–1, 78s; 5 U.S.C. 504; 5 U.S.C. 554–557.

Subpart A—Uniform Rules of Practice and Procedure

§ 308.1 Scope.

This subpart prescribes rules of practice and procedure applicable to adjudicatory proceedings as to which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Federal Deposit Insurance Corporation ("FDIC"), should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the FDIC is the appropriate regulatory agency;

(e) Assessment of civil money penalties by the FDIC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate regulatory agency for any violation of:

(1) Sections 22(h) and 23 of the Federal Reserve Act ("FRA"), or any regulation issued thereunder, and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1828(j);

(2) Section 106(b) of the Bank Holding Company Act Amendments of 1970 ("BHCA Amendments of 1970"), and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(3) Any provision of the Change in Bank Control Act of 1978, as amended (the "CBCA"), or any regulation or order issued thereunder, and certain unsafe or unsound practices, or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(4) Section 7(a)(1) of the FDIA, pursuant to 12 U.S.C. 1817(a)(1);

(5) Any provision of the International Lending Supervision Act of 1983 ("ILSA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(6) Any provision of the International Banking Act of 1978 ("IBA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(7) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(8) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(9) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the FDIC, the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the FDIC's Local Rules.

§ 308.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 308.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Board of Directors* or *Board* means the Board of Directors of the Federal Deposit Insurance Corporation or its designee.

(d) *Decisional employee* means any member of the Federal Deposit Insurance Corporation's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Board of Directors or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(e) *Designee* of the Board of Directors means officers or officials of the Federal Deposit Insurance Corporation acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR part 303 of this chapter or by specific resolution of the Board of Directors.

(f) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the FDIC in an adjudicatory proceeding.

(g) *Executive Secretary* means the Executive Secretary of the Federal Deposit Insurance Corporation or his or her designee.

(h) *FDIC* means the Federal Deposit Insurance Corporation.

(i) *Final order* means an order issued by the FDIC with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(j) *Institution* includes:

(1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHCA (12 U.S.C. 1841 *et seq.*);

(3) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a));

(4) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(5) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(6) Any federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(k) *Institution-affiliated party* means any institution-affiliated party as that

term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(l) *Local Rules* means those rules promulgated by the FDIC in those subparts of this part other than subpart A.

(m) *Office of Financial Institution Adjudication* ("OFIA") means the executive body charged with overseeing the administration of administrative enforcement proceedings of the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve Board ("FRB"), the FDIC, the Office of Thrift Supervision ("OTS") and the National Credit Union Administration ("NCUA").

(n) *Party* means the FDIC and any person named as a party in any notice.

(o) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (j) of this section.

(p) *Respondent* means any party other than the FDIC.

(q) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions set forth at § 308.01 and as specified in subparts B through P of this part.

(r) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 308.4 Authority of Board of Directors.

The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 308.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § 308.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Board of Directors shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Board of Directors a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 308.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the FDIC or an administrative law judge.* (1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the FDIC if such attorney is not currently suspended or debarred from practice before the FDIC.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the FDIC.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the FDIC, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 308.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: The counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 308.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 308.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 308.9 Ex parte communications.

(a) *Definition.* (1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Board of Directors, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the FDIC until the date that the Board of Directors issues its final decision pursuant to § 308.40(c), no party, interested person or counsel therefore shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to any member of the Board of Directors, the administrative law judge, or a decisional employee. No member of the Board of Directors, an administrative law judge, or decisional employee shall knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, any member of the Board of Directors or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions that they believe to be appropriate under the circumstances. The administrative law judge or the Board of Directors shall then determine whether any action should be taken concerning the ex parte communication in accordance with paragraph (d) of this section.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board of Directors or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 308.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 308.25 and 308.26, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Board of Directors or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Board of Directors or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½×11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 308.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the FDIC and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Board of Directors, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 308.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 308.10(c).

(c) *By the Board of Directors.* (1) All papers required to be served by the Board of Directors or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 308.6, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 308.6, the Board of Directors or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 308.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b) (1) of this section may be modified by the Board of Directors or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Board of Directors or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 308.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Board of Directors pursuant to § 308.36, the Board of Directors may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party or of the Board of Directors after notice and opportunity to respond is afforded all non-moving parties, or on the administrative law judge's own motion.

§ 308.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the FDIC is the party requesting the subpoena. The FDIC shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the FDIC.

§ 308.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any FDIC representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 308.16 FDIC's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the FDIC to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the FDIC to conduct or continue any form of investigation authorized by law.

§ 308.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 308.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1) (i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), a proceeding governed by this subpart is commenced by issuance of a notice by the FDIC.

(ii) The notice must be served by the Executive Secretary upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with the OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12

U.S.C. 1817(j)(4)) commence with the issuance of an order by the FDIC.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the FDIC's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the FDIC is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 308.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 308.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Board of Directors or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 308.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 308.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 308.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must be filed with the Executive Secretary for disposition by the Board of Directors.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Executive Secretary, any party may file a written response to a

motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 308.29 and 308.30.

§ 308.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by the § 308.107 of subpart B of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 308.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by each Agency's rules implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 308.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 308.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 308.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 308.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general

relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 308.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 308.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 308.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a

failure to comply with, a subpoena issued under this section.

§ 308.28 Interlocutory review.

(a) *General rule.* The Board of Directors may review a ruling of the administrative law judge prior to the certification of the record to the Board of Directors only in accordance with the procedures set forth in this section and § 308.23.

(b) *Scope of review.* The Board of Directors may exercise interlocutory review of a ruling of, the administrative law judge if the Board of Directors finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 308.23. Any party may file a response to a request for interlocutory review in accordance with § 308.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Board of Directors for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board of Directors under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Board of Directors.

§ 308.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Board of Directors issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Board of Directors. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 308.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 308.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached

and any procedural determinations made.

§ 308.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) Effect of failure to comply. No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 308.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the FDIC, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817 (j)(4)), within 20 days from service of the hearing order, any respondent may file with the Executive Secretary a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 308.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 308.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 308.26(c).

§ 308.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) Order of hearing. Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) Stipulations. Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 308.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or Board of Directors shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institution regulatory agency or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Board of Directors.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 308.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 308.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 308.37(b), the administrative law judge shall file with and certify to the Executive Secretary for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 308.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 308.38, a party may file with the Executive Secretary written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board of Directors if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 308.40 Review by Board of Directors.

(a) *Notice of submission to Board of Directors.* When the Executive Secretary determines that the record in the proceeding is complete, the Executive Secretary shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision.

(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Executive Secretary within the time for filing exceptions, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision. Oral argument before the Board of Directors must be on the record.

(c) *Final decision.* (1) Decisional employees may advise and assist the Board of Directors in the consideration and disposition of the case. The final decision of the Board of Directors will be based upon review of the entire record of the proceeding, except that the Board of Directors may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Board of Directors shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Board of Directors orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Board of Directors shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Board of Directors or required by statute, upon any appropriate state or Federal supervisory authority.

§ 308.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the FDIC may not, unless specifically ordered by the Board of Directors or a reviewing court, operate as a stay of any order issued by the FDIC. The Board of Directors may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—General Rules of Procedure

§ 308.101 Scope of Local Rules.

(a) Subparts B and C of the Local Rules prescribe rules of practice and procedure to be followed in the administrative enforcement proceedings initiated by the FDIC as set forth in § 308.01 of the Uniform Rules.

(b) Except as otherwise specifically provided, the Uniform Rules and subpart B of the Local Rules shall not apply to subparts D through P of the Local Rules.

(c) Subpart C of the Local Rules shall apply to any administrative proceeding initiated by the FDIC.

§ 308.102 Authority of Board of Directors and Executive Secretary.

(a) *The Board of Directors.* (1) The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary.

(2) Nothing contained in this part 308 shall be construed to limit the power of the Board of Directors granted by applicable statutes or regulations.

(b) *The Executive Secretary.* When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board of Directors.

§ 308.103 Appointment of administrative law judge.

(a) *Appointment.* Unless otherwise directed by the Board of Directors or as otherwise provided in the Local Rules, a hearing within the scope of this part 308 shall be held before an administrative law judge of the Office of Financial Institution Adjudication ("OFIA").

(b) *Procedures.* (1) The Executive Secretary shall promptly after issuance of the notice refer the matter to the OFIA which shall secure the appointment of an administrative law judge to hear the proceeding.

(2) OFIA shall advise the parties, in writing, that an administrative law judge has been appointed.

§ 308.104 Filings with the Board of Directors.

(a) *General Rule.* All materials required to be filed with or referred to the Board of Directors in any proceedings under this part 308 shall be filed with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

(b) *Scope.* Filings to be made with the Executive Secretary include pleadings and motions filed during the proceeding; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; motions and responses to motions filed by the parties after the record has been certified to the Board of Directors; exceptions and requests for oral argument; and any other papers required to be filed with the Board of Directors under this part 308.

§ 308.105 Custodian of the record.

The Executive Secretary is the official custodian of the record when no administrative law judge has jurisdiction over the proceeding. As the official custodian, the Executive Secretary shall maintain the official record of all papers filed in each proceeding.

§ 308.106 Written testimony in lieu of oral hearing.

(a) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not require such a format if that format would violate the objecting party's right under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, shall be submitted and the oral portion of the hearing begun within 30 days of the date set for filing written direct testimony.

(3) The administrative law judge shall direct, unless good cause requires otherwise, that—

(i) All parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section; and

(ii) All parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

§ 308.107 Document discovery.

(a) Parties to proceedings set forth at § 308.01 of the Uniform Rules and as provided in the Local Rules may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

§ 308.108 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act:

(1) Constitutes contemptuous conduct;

(2) Has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has unduly delayed the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Limits on dismissal as a sanction.* No recommendation of dismissal shall be made by the administrative law judge or granted by the Board of Directors based on the failure to hold a hearing within the time period called for in this part 308, or on the failure of an administrative law judge to render a recommended decision within the time period called for in this part 308, absent a finding:

(1) That the delay resulted solely or principally from the conduct of the FDIC enforcement counsel;

(2) That the conduct of the FDIC enforcement counsel is unexcused;

(3) That the moving respondent took all reasonable steps to oppose and prevent the subject delay;

(4) That the moving respondent has been materially prejudiced or injured; and

(5) That no lesser or different sanction is adequate.

(d) *Procedure for imposition of sanctions.* (1) The administrative law judge, upon the request of any party, or on his or her own motion, may impose sanctions in accordance with this section, provided that the administrative law judge may only recommend to the Board of Directors the sanction of entering a final order determining the case on the merits.

(2) No sanction, other than refusing to accept late papers, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any counsel or party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the administrative law judge directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge.

(4) *Section not exclusive* Nothing in this section shall be read as precluding the administrative law judge or the Board of Directors from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 308.109 Suspension and disbarment.

(a) *Discretionary suspension and disbarment.* (1) The Board of Directors may suspend or revoke the privilege of any counsel to appear or practice before the FDIC if, after notice of and opportunity for hearing in the matter, that counsel is found by the Board of Directors:

(i) Not to possess the requisite qualifications to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have engaged in, or aided and abetted, a material and knowing violation of the FDIA; or

(iv) To have engaged in contemptuous conduct before the FDIC. Suspension or revocation on the grounds set forth in paragraphs (a)(1) (ii), (iii), and (iv) of this section shall only be ordered upon a further finding that the counsel's conduct or character was sufficiently egregious as to justify suspension or revocation.

(2) Unless otherwise ordered by the Board of Directors, an application for reinstatement by a person suspended or disbarred under paragraph (a)(1) of this section may be made in writing at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. The suspension or disbarment shall continue until the applicant has been reinstated by the Board of Directors for good cause shown or until, in the case of a suspension, the suspension period has expired. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice

before the OCC, Board of Governors, the OTS, the NCUA, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, within the last ten years, shall be suspended automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Failure to file any such paper shall not impair the operation of any other provision of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board of Directors for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time not less than one year after the applicant's most recent application. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

(c) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under the Uniform Rules, provided that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof, and that the Board of Directors may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

(d) *Summary suspension for contemptuous conduct.* A finding by the administrative law judge of contemptuous conduct during the course of any proceeding shall be grounds for summary suspension by the administrative law judge of a counsel or other representative from any further participation in that proceeding for the duration of that proceeding.

(e) *Practice defined.* Unless the Board of Directors orders otherwise, for the purposes of this section, practicing before the FDIC includes, but is not limited to, transacting any business with the FDIC as counsel or agent for any other person and the preparation of any statement, opinion, or other paper by a counsel, which statement, opinion, or paper is filed with the FDIC in any registration statement, notification, application, report, or other document, with the consent of such counsel.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

§ 308.110 Scope.

Except as specifically indicated in this subpart, the rules and procedures in this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings in connection with the disapproval by the Board of Directors or its designee of a proposed acquisition of control of an insured nonmember bank.

§ 308.111 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control of an insured nonmember bank:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any section of the United States may be to substantially lessen competition or to tend to create a monopoly or would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit such person to control the bank;

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by the FDIC; or

(f) The FDIC determines that the proposed acquisition would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

§ 308.112 Notice of disapproval.

(a) *General rule.* (1) Within three days of the decision by the Board of Directors or its designee to disapprove a proposed acquisition of control of an insured nonmember bank, a written notice of disapproval shall be mailed by first class mail to, or otherwise served upon, the party seeking acquire control.

(2) The notice of disapproval shall:

(i) Contain a statement of the basis for the disapproval; and

(ii) Indicate that a hearing may be requested by filing a written request with the Executive Secretary within ten days after service of the notice of disapproval; and if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.113, must be filed within 20 days after service of the notice of disapproval.

(b) *Waiver of hearing.* Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity for a hearing and the notice of disapproval shall constitute a final and unappealable order.

(c) Section 308.18(b) of the Uniform Rules shall not apply to the content of the Notice of Disapproval.

§ 308.113 Answer to notice of disapproval.

(a) *Contents.* (1) An answer to the notice of disapproval of a proposed acquisition of control shall be filed within 20 days after service of the notice of disapproval and shall specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice of disapproval which are not specifically denied are deemed admitted by the applicant.

(2) Any hearing under this subpart shall be limited to those parts of the notice of disapproval that are specifically denied.

(b) *Failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice of disapproval. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file a recommended decision containing the findings and relief sought in the notice. A final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.

§ 308.114 Burden of proof.

The ultimate burden of proof shall be upon the person proposing to acquire a depository institution. The burden of going forward with a *prima facie* case shall be upon the FDIC.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

§ 308.115 Scope.

The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)), or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

§ 308.116 Assessment of penalties.

(a) *In general.* The civil money penalty shall be assessed upon the service of a Notice of Assessment which shall become final and unappealable unless the respondent requests a hearing pursuant to § 308.19(c)(2).

(b) *Amount.* (1) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto, shall forfeit and pay a civil money penalty of not more than $5,000 for each day the violation continues.

(2) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or recklessly engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; which violation, practice or breach is part of a pattern of misconduct; or causes or is likely to cause more than a minimal loss to such institution; or results in pecuniary gain or other benefit to such person, shall forfeit and pay a civil money penalty of not more than $25,000 for each day such violation, practice or breach continues.

(3) Any person who knowingly violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; and knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice or breach, shall forfeit and pay a civil money penalty not to exceed:

(i) In the case of a person other than a depository institution—$1,000,000 per day for each day the violation, practice or breach continues; or

(ii) In the case of a depository institution—an amount not to exceed the lesser of $1,000,000 or one percent of the total assets of such institution for each day the violation, practice or breach continues.

(c) *Mitigating factors.* In assessing the amount of the penalty, the Board of Directors or its designee shall consider the gravity of the violation, the history of previous violations, respondent's financial resources, good faith, and any other matters as justice may require.

(d) *Failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice of disapproval. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file a recommended decision containing the findings and relief sought in the notice. A final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.

§ 308.117 Effective date of, and payment under, an order to pay.

If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

§ 308.118 Collection of penalties.

The FDIC may collect any civil penalty assessed pursuant to this subpart by agreement with the respondent, or the FDIC may bring an action against the respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

§ 308.119 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the FDIA.* The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank depository institution or an insured branch of a foreign bank pursuant to section 8(a) of the FDIA (12 U.S.C. 1818(a)), except that the Uniform Rules and subpart B of the Local Rules shall not apply to the temporary suspension of insurance pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.124 of this subpart F shall apply to proceedings in connection with the involuntary termination of the insured status of an insured depository institution or an insured branch of a foreign bank pursuant to section 8(p) of the FDIA (12 U.S.C. 1818(p)). The Uniform Rules shall not apply to proceedings under section 8(p) of the FDIA.

§ 308.120 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the FDIA:

(1) An insured depository institution or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such depository institution;

(2) An insured depository institution is in an unsafe or unsound condition such that it should not continue operations as an insured depository institution; or

(3) An insured depository institution or its directors or trustees have violated an applicable law, rule, regulation, order, condition imposed in writing by the FDIC in connection with the granting of any application or other request by the insured depository institution or have violated any written agreement entered into between the insured depository institution and the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board of Directors finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board of Directors or the failure of any person associated with a foreign bank to appear promptly as a party to a proceeding pursuant to section 8(e) of the FDIA (12 U.S.C. 1818(e)), shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.121 Notification to primary regulator.

(a) *Service of notification.* (1) Upon a determination by the Board of Directors or its designee pursuant to § 308.120 of an unsafe or unsound practice or condition or of a violation, a notification shall be served upon the appropriate Federal banking agency of the insured depository institution, or the State banking supervisor if the FDIC is the appropriate Federal banking agency.

The notification shall be served not less than 30 days before the Notice of Intent to Terminate Insured Status required by section 8(a)(2)(B) of the FDIA (12 U.S.C. 1818(a)(2)(B)), and § 308.122, except that this period for notification may be reduced or eliminated with the agreement of the appropriate Federal banking agency.

(2) *Appropriate Federal banking agency* shall have the meaning given that term in section 3(q) of the FDIA (12 U.S.C. 1813(q)), and shall be the OCC in the case of a national bank, a District bank or an insured Federal branch of a foreign bank; the FDIC in the case of an insured nonmember bank, including an insured State branch of a foreign bank; the Board of Governors in the case of a state member bank; or the OTS in the case of an insured Federal or state savings association.

(3) In the case of a state nonmember bank, insured Federal branch of a foreign bank, or state member bank, in addition to service of the notification upon the appropriate Federal banking agency, a copy of the notification shall be sent to the appropriate State banking supervisor.

(4) In instances in which a Temporary Order Suspending Insurance is issued pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)), the notification may be served concurrently with such order.

(b) *Contents of notification.* The notification shall contain the FDIC's determination, and the facts and circumstances upon which such determination is based, for the purpose of securing correction of such practice, condition, or violation.

§ 308.122 Notice of intent to terminate.

(a) If, after serving the notification under § 308.121, the Board of Directors determines that any unsafe or unsound practices, condition, or violation, specified in the notification, requires the termination of the insured status of the insured depository institution, the Board of Directors or its designee, if it determines to proceed further, shall cause to be served upon the insured depository institution a notice of its intention to terminate insured status not less than 30 days after service of the notification, unless a shorter time period has been agreed upon by the appropriate Federal banking agency.

(b) The Board of Directors or its designee shall cause a copy of the notice to be sent to the appropriate Federal banking agency and to the appropriate state banking supervisor, if any.

§ 308.123 Notice to depositors.

If the Board of Directors enters an order terminating the insured status of an insured depository institution or branch, the insured depository institution shall, on the day that order becomes final, or on such other day as that order prescribes, mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the insured depository institution or branch. The insured depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____.

1. The status of the _____, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the _____ day of_____, 19____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the _____ day of_____, 19____, will continue to be insured, as provided by Federal Deposit Insurance Act, for *2 years* after the close of business on the _____ day of _____, 19____. Provided, however, that any withdrawals after the close of business on the _____ day of _____, 19____, will reduce the insurance coverage by the amount of such withdrawals.

_____

(Name of (depository institution or branch)

_____

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.124 Involuntary termination of insured status for failure to receive deposits.

(a) *Notice to show cause.* When the Board of Directors or its designee has evidence that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds, the Board of Directors or its designee shall give written notice of this evidence to the depository institution and shall direct the depository institution to show cause why its insured status should not be terminated under the provisions of section 8(p) of the FDIA (12 U.S.C. 1818(p)). The insured depository institution shall have 30 days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board of Directors determines that the depository institution is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board of Directors

shall notify the depository institution that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of that notification.

(c) *Notification to depositors of termination of insured status.* Within the time specified by the Board of Directors and prior to the date of termination of its insured status, the depository institution shall mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____.

The status of the _____, as an (insured depository institution) (insured branch) under the Federal Deposit Insurance Act, will terminate on the _____ day of_____, 19____, and its deposits will thereupon cease to be insured.

_____

(Name of depository institution or branch)

_____

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.125 Temporary suspension of deposit insurance.

(a) If, while an action is pending under section 8(a)(2) of the FDIA (12 U.S.C. 1818(a)(2)), the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a special supervisory association to which § 308.126 of this subpart applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Board of Directors may issue a Temporary Order Suspending Deposit Insurance, pending completion of the proceedings under section 8(a)(2) of the FDIA (12 U.S.C. 1818(a)(2)).

(b) The temporary order shall be served upon the insured institution and a copy sent to the appropriate Federal banking agency and to the appropriate State banking supervisor.

(c) The temporary order shall become effective ten days from the date of service upon the insured depository institution. Unless set aside, limited, or suspended in proceedings under section 8(a)(8)(D) of the FDIA (12 U.S.C. 1818 (a)(8)(D)), the temporary order shall remain effective and enforceable until an order terminating the insured status of the institution is entered by the Board of Directors and becomes final, or the Board of Directors dismisses the proceedings.

(d) Notification to depositors of suspension of insured status. Within the time specified by the Board of Directors and prior to the suspension of insured status, the depository institution shall mail a notification of suspension of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____.

1. The status of the _____, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will be suspended as of the close of business on the _____ day of _____, 19____, pending the completion of administrative proceedings under section 8(a) of the Federal Deposit Insurance Act.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the _____ day of _____, 19____, will continue to be insured for _____ after the close of business on the_____ day of _____, 19____. Provided, however, that any withdrawals after the close of business on the _____ day of_____, 19____, will reduce the insurance coverage by the amount of such withdrawals.

_____

(Name of depository institution or branch)

_____

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.126 Special supervisory associations.

If the Board of Directors finds that a savings association is a special supervisory association under the provisions of section 8(a)(8)(B) of the FDIA (12 U.S.C. 1818(a)(8)(B)) for purposes of temporary suspension of insured status, the Board of Directors shall serve upon the association its findings with regard to the determination that the capital of the association, as computed using applicable accounting standards, has suffered a material decline; that such association or its directors or officers, is engaging in an unsafe or unsound practice in conducting the business of the association; that such association is in an unsafe or unsound condition to continue operating as an insured association; or that such association or its directors or officers, has violated any law, rule, regulation, order, condition imposed in writing by any Federal banking agency, or any written agreement, or that the association failed to enter into a capital improvement plan acceptable to the Corporation prior to January, 1990.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.127 Scope.

(a) *Cease-and-desist proceedings under section 8 of the FDIA.* The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to order an insured nonmember bank or an institution-affiliated party to cease and desist from practices and violations described in section 8(b) of the FDIA, 12 U.S.C. 1818(b); provided that the provisions of the Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the FDIA (12 U.S.C. 1818(c)).

(b) *Proceedings under the Securities Exchange Act of 1934.* (1) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Securities Exchange Act, as amended (15 U.S.C. 78o–4(c)(5)) where the municipal securities dealer is an insured

nonmember bank or a subsidiary thereof.

(2) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of section 17, 17A and 19 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q, 78q–1, 78s), and the applicable rules and regulations thereunder, where the clearing agency or transfer agent is an insured nonmember bank or a subsidiary thereof.

§ 308.128 Grounds for cease-and-desist orders.

(a) *General rule.* The Board of Directors or its designee may issue and have served upon any insured nonmember bank or an institution-affiliated party a notice, as set forth in § 308.18 of the Uniform Rules for practices and violations as described in § 308.127.

(b) *Extraterritorial acts of foreign banks.* An act, violation or practice committed outside the United States by a foreign bank or an institution-affiliated party that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section or a temporary cease-and-desist order under section 308.131 of this subpart, shall be a ground for an order if the Board of Directors or its designee finds that:

(1) The act, violation or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act, violation or practice committed within any state, territory, or possession of the United States or the District of Columbia which act, violation or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act, violation or practice, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.129 Notice to state supervisory authority.

The Board of Directors or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to subpart G of this part, and the grounds thereof. Any proceedings shall be conducted according to subpart G of this part, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action. No insured institution or other party who is the subject of any notice or order issued by the FDIC under this section shall have standing to raise the requirements of this subpart as grounds for attacking the validity of any such notice or order.

§ 308.130 Effective date of order and service on bank.

(a) *Effective date.* A cease-and-desist order issued by the Board of Directors after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of 30 days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.131 Temporary cease-and-desist order.

(a) *Issuance.* (1) When the Board of Directors or its designee determines that the violation, or the unsafe or unsound practice, as specified in the notice, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the bank, or is likely to weaken the condition of the bank or otherwise prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)) and § 308.128 of this subpart, the Board of Directors or its designee may issue a temporary order requiring the bank or an institution-affiliated party to immediately cease and desist from any such violation, practice or to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(2) When the Board of Directors or its designee issues a Notice of charges pursuant to 12 U.S.C. 1818(b)(1) which specifies on the basis of particular facts and circumstances that a bank's books and records are so incomplete or inaccurate that the FDIC is unable, through the normal supervisory process, to determine the financial condition of the bank or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the bank, then the Board of Directors or its designee may issue a temporary order requiring:

(i) The cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(3) The temporary order shall be served upon the bank or the institution-affiliated party named therein and shall also be served upon the bank in the case where the temporary order applies only to an institution-affiliated party.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or the institution-affiliated party. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the FDIA (12 U.S.C. 1818(c)(2)), the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the FDIA (12 U.S.C. 1818(b)) and entry of an order which has become final, or with respect to paragraph (a)(2) of this section the FDIC determines by examination or otherwise that the bank's books and records are accurate and reflect the financial condition of the bank.

(c) *Uniform Rules do not apply.* The Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

§ 308.132 Assessment of penalties.

(a) *Scope.* The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties, including civil money penalties for violation of section 7(a) of the FDIA (12 U.S.C. 1817(a)).

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board of Directors or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the

FDIA (12 U.S.C. 1818(i)), and § 308.01(e)(1) of the Uniform Rules.

(2) The Board of Directors or its designee may assess civil penalties pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) as follows:

(i) *Late filing—Tier One penalties.* In cases in which a bank fails to make or publish its Report of Condition and Income ("Call Report") within the appropriate time periods, the Board of Directors or its designee may assess a civil money penalty of not more than $2,000 per day where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the bank inadvertently transmitted a Call Report which is minimally late.

(A) *First offense.* Generally, in such cases, the amount assessed shall be $300 per day for each of the first 15 days for which the failure continues, and $600 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than $25,000,000 in assets, the amount assessed shall be the greater of $100 per day or 1/1000th of the bank's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and $200 or 1/500th of the bank's total assets, ⅕ of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Second offense.* Where the bank has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be $500 per day for each of the first 15 days for which the failure continues, and $1,000 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than $25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the bank's total assets.

(C) *Mitigating factors.* The amounts set forth in paragraph (c)(2)(i)(A) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

(D) *Lengthy or repeated violations.* The amounts set forth in paragraph (c)(2)(i) of this section will be assessed on a case-by-case basis where the amount of time of the bank's delinquency is lengthy or the bank has been delinquent repeatedly in making or publishing its Call Reports.

(E) *Waiver.* Absent extraordinary circumstances outside the control of the bank, penalties assessed for late filing shall not be waived.

(ii) *Late filing—Tier Two penalties.* Where a bank fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than $20,000 per day for each day the failure continues.

(iii) *False or misleading reports or information.*— (A) *Tier One penalties.* In cases in which a bank submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than $2,000 per day for each day the information is not corrected, where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the bank inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where a bank submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than $20,000 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where a bank knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of $1,000,000 or 1 percent of the bank's total assets per day for each day the information is not corrected.

(D) *Mitigating factors.* The amounts set forth in paragraph (c)(2) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

§ 308.133 Effective date of, and payment under, an order to pay.

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable 60 days after the Notice is served upon the respondent.

(2) If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

§ 308.134 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors or its designee:

(a) To censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency;

(b) To censure, suspend, or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securities dealer; and

(c) To deny registration, to censure limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency. This subpart and the Uniform Rules shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

§ 308.135 Grounds for imposition of sanctions.

(a) *Action under section 15(b)(4) of the Exchange Act.* The Board of Directors or its designee may issue and have served upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, or any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, or to censure, suspend, or bar the person from being associated with the municipal securities dealer, when the Board of Directors or its designee determines:

(1) That such municipal securities dealer or such person

(i) Has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Exchange Act, as amended (15 U.S.C. 78o);

(ii) Has been convicted of any offense specified in section 15(b)(4)(B) of the Exchange Act within ten years of commencement of proceedings under this subpart; or

(iii) Is enjoined from any act, conduct, or practice specified in section 15(b)(4)(C) of the Exchange Act; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (a) of this section.

(b) *Action under sections 17 and 17A of the Exchange Act.* The Board of Directors or its designee may issue, and have served upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to deny registration to, censure, place limitations on the activities or function or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board of Directors or its designee determines:

(1) That the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Exchange Act, as amended, or any applicable rule or regulation issued pursuant thereto; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (b) of this section.

§ 308.136 Notice to and consultation with the Securities and Exchange Commission.

Before initiating any proceedings under § 308.135, the FDIC shall:

(a) Notify the Securities and Exchange Commission of the identity of the municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action; and

(b) Consult with the Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

§ 308.137 Effective date of order imposing sanctions.

An order issued by the Board of Directors after a hearing or an order issued upon default shall become effective at the expiration of 30 days after the service of the order, except that an order of censure, denial, or revocation of registration is effective when served. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors, its designee, or a reviewing court, provided that orders of suspension shall continue in effect no longer than 12 months.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

§ 308.138 Scope.

The rules and procedures of this subpart J shall apply to proceedings by the Board of Directors or its designee to exempt, in whole or in part, an issuer of securities from the provisions of sections 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act, as amended (15 U.S.C. 781, 78m, 78n (a), (c) (d) or (f)), or to exempt an officer or a director or beneficial owner of securities of such an issuer from the provisions of section 16 of the Exchange Act (15 U.S.C. 78p).

§ 308.139 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

§ 308.140 Newspaper notice.

(a) *General rule.* If the Board of Directors or its designee, in its sole discretion, decides to further consider an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain the name and address of the issuer and the name and title of the applicant, the exemption sought, a statement that a hearing will be held, and a statement that within 30 days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

§ 308.141 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.140, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than 30 days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

§ 308.142 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the APA (5 U.S.C. 554–557), the Uniform Rules and § 308.108 of subpart B of the Local Rules shall not apply to hearings under this subpart.

(b) *Hearing Procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) There shall be no discovery in proceeding under this subpart J.

(3) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(4) The proceedings shall be on the record and the transcript shall be promptly submitted to the Board of Directors. The presiding officer shall make recommendations to the Board of Directors, unless the Board of Directors, in its sole discretion, directs otherwise.

§ 308.143 Decision of Board of Directors.

Following submission of the hearing transcript to the Board of Directors, the Board of Directors may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

§ 308.144 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured depository institution, any institutions making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the FDIA (12 U.S.C. 1820(c)). The Uniform Rules and subpart B of the Local Rules shall not apply to investigations under this subpart.

§ 308.145 Conduct of investigation.

An investigation conducted pursuant to section 10(c) of the FDIA shall be initiated only upon issuance of an order by the Board of Directors; or by the General Counsel, the Director of the Division of Supervision, the Director of the Division of Liquidation, or their respective designees as set forth at § 303.9 of this chapter. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

§ 308.146 Powers of person conducting investigation.

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board of Directors any instance where any attorney has been guilty of contemptuous conduct. The Board of Directors, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

§ 308.147 Investigations confidential.

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in part 309 of this chapter and as otherwise required by law.

§ 308.148 Rights of witnesses.

In an investigation pursuant to section 10(c):

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by a counsel who meets the requirements of § 308.06 of the Uniform Rules. That counsel may be present and may:

(1) Advise the witness before, during, and after such testimony;

(2) Briefly question the witness at the conclusion of such testimony for clarification purposes; and

(3) Make summary notes during such testimony solely for the use and benefit of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of multiple witnesses, the person conducting the investigation may require the attorney to comply with the provisions of § 308.08 of the Uniform Rules; and

(e) Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

§ 308.149 Service of subpoena.

Service of a subpoena shall be accomplished in accordance with § 308.11 of the Uniform Rules.

§ 308.150 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, in an investigation pursuant to section 10(c) shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

(b) *Subscription by witness.* The transcript of testimony shall be subscribed by the witness, unless the person conducting the investigation and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the transcript of the testimony is not subscribed by the witness, the official reporter taking the testimony shall certify that the transcript is a true and complete transcript of the testimony.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

§ 308.151 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a state nonmember bank pursuant to Section 32 of the FDIA (12 U.S.C. 1831i) for the consent of the FDIC to add to or replace an individual on the Board of Directors, or to employ any individual as a senior executive officer, or change the responsibilities of any individual to a position of senior executive officer where the bank:

(a) Has been chartered and operating as an insured nonmember bank for less than two years or the insured state branch has been licensed and operating as an insured branch for less than two years;

(b) Has undergone a change in control within the preceding two years; or

(c) Is not in compliance with the minimum capital requirement applicable to it or is otherwise in a troubled condition as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection.

§ 308.152 Grounds for disapproval of notice.

The Board of Directors or its designee may issue a notice of disapproval with respect to a notice submitted by a state

nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice submitted indicates that it would not be in the best interests of the depositors of the state nonmember bank to permit the individual to be employed by or associated with such bank; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicated that it would not be in the best interests of the public to permit the individual to be employed by, or associated with, the state nonmember bank.

§ 308.153 Procedures where notice of disapproval issues pursuant to § 303.14 of this chapter.

(a) The Notice of Disapproval shall be served upon the insured state nonmember bank and the candidate for director or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in § 308.152;

(2) Inform the individual and the bank that a request for review of the disapproval may be filed within fifteen days of receipt of the Notice of Disapproval; and

(3) Specify that additional information, if any, must be contained in the request for review.

(b) The request for review must be filed at the appropriate regional office.

(c) The request for review must be in writing and should:

(1) Specify the reasons why the FDIC should reconsider its disapproval; and

(2) Set forth relevant, substantive and material documents, if any, that for good cause were not previously set forth in the notice required to be filed pursuant to section 32 of the FDIA (12 U.S.C. 1831i).

§ 308.154 Decision on review.

(a) Within 30 days of receipt of the request for review, the Board of Directors or its designee, shall notify the bank and/or the individual filing the reconsideration (hereafter "petitioner") of the FDIC's decision on review.

(b) If the decision is to grant the review and approve the notice, the bank and the individual involved shall be so notified.

(c) A denial of the request for review pursuant to section 32 of the FDIA shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefore, may be filed with the Executive Secretary within 15 days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 308.152.

(d) If a decision is not rendered within 30 days, the petitioner may file a request for a hearing within fifteen days from the date of expiration.

§ 308.155 Hearing.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for a hearing filed pursuant to § 308.154. Upon request of the petitioner or the FDIC, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the candidate for director or senior executive officer. The burden of going forward with a *prima facie* case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.101 through 308.102, and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The petitioner may appear at the hearing and shall have the right to introduce relevant and material documents and make an oral presentation. Members of the FDIC enforcement staff may attend the hearing and participate as representatives of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the petitioner afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (c) of this section the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors or its designee, where possible, within fifteen days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The petitioner may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(f) *Decision by Board of Directors or its designee.* Within 45 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the petitioner. The Board of Directors or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

§ 308.156 Scope.

The rules and procedures set forth in this subpart shall apply to an application filed pursuant to section 19 of the FDIA (12 U.S.C. 1829) by an insured depository institution and a person, who has been convicted of any criminal offense involving dishonesty or a breach of trust or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution of such offense, to seek the prior written consent of the FDIC to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution.

§ 308.157 Relevant considerations.

(a) In proceedings under § 308.156 on an application to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution, the following shall be considered:

(1) Whether the conviction or entry into a pretrial diversion or similar program is for a criminal offense involving dishonesty or breach of trust;

(2) Whether participation directly or indirectly by the person in any manner in the conduct of the affairs of the insured depository institution constitutes a threat to the safety or soundness of the insured depository institution or the interests of its depositors, or threatens to impair public confidence in the insured depository institution;

(3) Evidence of the applicant's rehabilitation;

(4) The position to be held by the applicant;

(5) The amount of influence and control the applicant will be able to exercise over the affairs and operations of the insured depository institution;

(6) The ability of the management at the insured depository institution to supervise and control the activities of the applicant;

(7) The level of ownership which the applicant will have at the insured depository institution;

(8) Applicable fidelity bond coverage for the applicant; and

(9) Additional factors in the specific case that appear relevant.

(b) The question of whether a person who was convicted of a crime or who agreed to enter a pretrial diversion or similar program, was guilty of that crime shall not be at issue in a proceeding under this subpart.

§ 308.158 Filing papers and effective date.

(a) *Filing with the regional office.* Applications pursuant to section 19 shall be filed in the appropriate regional office.

(b) *Effective date.* An application pursuant to section 19 may be made in writing at any time more than one year after the issuance of a decision denying an application pursuant to section 19. The removal and/or prohibition pursuant to section 19 shall continue until the applicant has been reinstated by the Board of Directors or its designee for good cause shown.

§ 308.159 Denial of applications.

A denial of an application pursuant to section 19 shall:

(a) Inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefor and any supporting evidence, may be filed with the Executive Secretary within 60 days after the denial; and

(b) Summarize or cite the relevant considerations specified in § 308.157 of this subpart.

§ 308.160 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed pursuant to § 308.159. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the person proposing to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution. The burden of going forward with a *prima facie* case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.101 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within 20 days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to

have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the person shall remain barred under section 19.

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected person whether the person shall remain barred under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following proceedings:

(a) To suspend an institution-affiliated party of an insured state nonmember bank, or to prohibit such party from further participation in the conduct of the affairs of the bank, where the individual is charged in any state, Federal, or territorial information or indictment, or complaint, with the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law; or

(b) To remove from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of the bank, except with the consent of the Board of Directors or its designee, if continued service or participation by such party poses a threat to the interests of the bank's depositors or threatens to impair public confidence in the depository institution, where a judgment of conviction or an agreement to enter a pre-trial diversion or other similar program is entered against such party, not subject to further appellate review, has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law.

§ 308.162 Relevant considerations.

(a)(1) In proceedings under § 308.161 (a) and (b) for a suspension, removal or prohibition order, the following shall be considered:

(i) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust; and

(ii) Whether continued service or participation by the institution-affiliated party may pose a threat to the interest of the bank's depositors, or threatens to impair public confidence in the bank.

(2) Additional factors in the specific case that appear relevant to its decision to continue in effect, rescind, terminate, or modify a suspension, removal or prohibition order may be considered.

(b) The question of whether an institution-affiliated party charged with a crime is guilty of the crime charged shall not be tried or considered in a proceeding under this subpart.

§ 308.163 Notice of suspension, and orders of removal or prohibition.

(a) *Notice of suspension or prohibition.* (i) The Board of Directors or its designee may suspend or prohibit from further participation in the conduct of the affairs of the bank an institution-affiliated party by written notice of suspension or prohibition upon a determination by the Board of Directors or its designee that the grounds for such suspension or prohibition exist. The written notice of suspension or prohibition shall be served upon the institution-affiliated party and the bank.

(2) The written notice of suspension shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefore, and any supporting evidence, may be filed with the Executive Secretary within 30 days after receipt of the written notice; and

(ii) Summarize or cite to the relevant considerations specified in § 308.162 of this subpart.

(3) The suspension or prohibition shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

(b) *Order of removal or prohibition.* (1) The Board of Directors or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank an institution-affiliated party, when:

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.161(b); and

(ii) The Board of Directors or its designee determines that continued service or participation of the institution-affiliated party may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(2) The order shall be served upon the institution-affiliated party and the bank.

(3) The order shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within 30 days after receipt of the order; and

(ii) Summarize or cite the relevant considerations specified in § 308.162 of this subpart.

(4) The order shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

§ 308.164 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for hearing on an application filed pursuant to § 308.163. Upon the request of the applicant, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.101 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as representatives of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other

parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (b) of this section, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within ten days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect pursuant to § 308.163.

(e) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the order of removal or prohibition will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant. The Board of Directors or its designee shall promptly rescind or modify an order of removal or prohibition where the decision is favorable to the applicant.

Subpart O—Liability of Commonly Controlled Depository Institutions

§ 308.165 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the assessment of cross-guaranty liability against commonly controlled depository institutions.

§ 308.166 Grounds for assessment of liability.

Any insured depository institution shall be liable for any loss incurred or reasonably anticipated to be incurred by the corporation, subsequent to August 9, 1989, in connection with the default of a commonly controlled insured depository institution, or any loss incurred or reasonably anticipated to be incurred in connection with any assistance provided by the Corporation to any commonly controlled depository institution in danger of default.

§ 308.167 Notice of assessment of liability.

(a) The amount of liability shall be assessed upon service of a Notice of Assessment of Liability upon the liable depository institution, within two years of the date the Corporation incurred the loss.

(b) *Contents of Notice.* (1) The Notice of Assessment of Liability shall set forth:

(i) The basis for the FDIC's jurisdiction over the proceeding;

(ii) A statement of the Corporation's good faith estimate of the amount of loss it has incurred or anticipates incurring;

(iii) A statement of the method by which the estimated loss was calculated;

(iv) A proposed order directing payment by the liable institution of the FDIC's estimated amount of loss, and the schedule under which the payment will be due;

(v) In cases involving more than one liable institution, the estimated amount of each institution's share of the liability.

(2) The Notice of Assessment of Liability shall advise the liable institution(s):

(i) That an answer must be filed within 20 days after service of the Notice;

(ii) That, if a hearing is requested, a request for a hearing must be filed within 20 days after service of the Notice;

(iii) That if a hearing is requested, such hearing will be held within the judicial district in which the liable institution is found, or, in cases involving more than one liable institution, within a judicial district in which at least one liable institution is found;

(iv) That, unless the administrative law judge sets a different date, the hearing will commence 120 days after service of the Notice of Assessment of Liability; and

(v) That failure to request a hearing shall render the Notice of Assessment a final and unappealable order.

§ 308.168 Effective date of and payment: under an order to pay.

(a) Unless otherwise provided in the Notice of Assessment of Liability, payment of the assessment shall be due on or before the 21st day after service of the Assessment of Liability, under the terms of the schedule for payment set forth therein.

(b) All payments collected shall be paid to the Corporation.

(c) Failure to request a hearing as prescribed herein shall render the order to pay final and unappealable.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

§ 308.169 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. 504), which it implements, apply to adversary adjudications before the FDIC. The types of adjudication covered by this subpart are those listed in § 308.01 of the Uniform Rules. The Uniform Rules and subpart B of the Local Rules apply to any proceedings to recover fees and expenses under this subpart.

§ 308.170 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding within 30 days after service of the final

order of the Board of Directors in disposition of the proceeding.

(b) *Content.* The application and related documents shall conform to the requirements of § 308.10 of the Uniform Rules.

(c) *Service.* The application and related documents shall be served on all parties to the adversary adjudication in accordance with § 308.11 of the Uniform Rules, except that statements of net worth shall be served only on counsel for the FDIC.

(d) Upon receipt of an application, the Executive Secretary shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Executive Secretary determines, in his or her sole discretion, that there is cause to refer the matter to a different administrative law judge, the matter shall be referred to a different administrative law judge.

§ 308.171 Responses to application.

(a) *By FDIC.* (1) Within 20 days after service of an application, counsel for the FDIC may file with the Executive Secretary and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or files a statement of intent to negotiate under § 308.179 of this subpart, failure to file an answer within the 20-day period will be treated as a consent to the award requested.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the FDIC's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 308.180.

(b) *Reply to answer.* The applicant may file a reply if the FDIC has addressed in its answer any of the following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.180.

(c) *By other parties.* Any party to the adversary adjudication, other than the applicant and the FDIC, may file comments on an application within 20 days after service of the application. If the applicant is entitled to file a reply to the FDIC's answer under paragraph (b) of this section, another party may file comments on the answer within 15 days after service of the answer. A commenting party may not participate in any further proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

(d) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 308.172 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in paragraph (b) of this section.

(b) *Types of eligible applicant.* The types of eligible applicant are:

(1) An individual with a net worth of not more than $2,000,000 at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated.

(c) *Factors to be considered.* In determining the types of eligible applicants:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevails are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably eguivalent value will be presumed to have been made for this purpose.

(3) The net worth of a bank shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the adversary adjudication.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary adjudication was initiated. Part-time employees are included as though they were full-time employees.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant; and corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares. The Board of Directors may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board of Directors may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 308.173 Prevailing party.

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in

connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.175 if proration were not performed, whether separate or prorated treatment is appropriate, and the appropriate proration percentage, shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 308.174 Standards for awards.

A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

§ 308.175 Measure of awards.

(a) *General rule.* Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate, provided that no award under this subpart for the fee of an attorney or agent may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 308.176 Application for awards.

(a) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) A statement of the amount of fees and expenses for which an award is sought;

(4) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(5) A description of any affiliated individuals or entities, as defined in § 308.172(c)(5), or a statement that none exist;

(6) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.172(b) as of the date the proceeding was initiated; and

(7) Any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

(b) *Verification.* The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

§ 308.177 Statement of net worth.

(a) *General rule.* A statement of net worth must be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant.

(b) *Contents.* (1) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable unless the administrative law judge or the Board of Directors otherwise requires. Financial statements or reports to a Federal or state agency, prepared before the initiation of the adversary adjudication for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board of Directors otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.172(c)(2). Assets and liabilities of individuals shall include those beneficially owned within the meaning of the FDIC's rules and regulations.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. In all cases the administrative law judge or the Board of Directors may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding. Except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board of Directors or required by law, the statement of net worth shall be for the confidential use of counsel for the FDIC, the Board of Directors, and the administrative law judge.

§ 308.178 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board of Directors may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 308.179 Settlement negotiations.

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.171 for an additional 20 days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

§ 308.180 Further proceedings.

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 308.181 Recommended decision.

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than 90 days after the filing of the application or 30 days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 308.182 Board of Directors action.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board of Directors.* The Board of Directors shall render its decision within 60 days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board of Directors to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 308.183 Payment of awards.

An applicant seeking payment of an award made by the Board of Directors shall submit to the Executive Secretary a statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within 30 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

By order of the Board of Directors. Dated at Washington, DC, this 30th day of July, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-18780 Filed 8-8-91; 8:45 am]

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federal register

Friday
August 9, 1991

Part V

Department of Commerce

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program (PTFP); Policy Statement; Proposed Rules

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 91-0635-1135]

Public Telecommunications Facilities Program (PTFP); Policy Statement

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Proposal to issue further statement of Program Policy relating to the Public Telecommunications Facilities Program and request for public comments thereon.

SUMMARY: The National Telecommunications and Information Administration (NTIA) proposed to issue a Further Statement of Program Policy relating to the Public Telecommunications Facilities Program (PTFP). The Further Statement of Program Policy will provide guidance for PTFP grant applicants on funding considerations relating to three project categories: educational and instructional projects; projects to expand nonbroadcast services; and local matching funds requirements for broadcast improvement or augmentation projects. The proposed Statement will assist potential grant applicants in determining whether to apply for PTFP funds for specific projects within these categories and will respond on a uniform basis to frequently arising questions respecting the competitiveness of certain applications. The proposed Statement further is intended to encourage the submission of applications seeking to further public education efforts through use of telecommunications.

NTIA requests public comment on this proposed Further Statement of Program Policy.

In a separate Notice of Proposed Rulemaking, NTIA further proposes to clarify and/or to revise the rules governing the administration of the PTFP [15 CFR part 2301]. That Proposed Rulemaking is issued as a separate document in this issue of the **Federal Register**.

DATES: Comments must be submitted on or before September 9, 1991.

ADDRESSES: Persons interested in commenting on the proposed Statement of Program Policy must send three copies of any comments to: Office of the Chief Counsel, NTIA/DOC, 14th Street and Constitution Avenue NW., room H-4713, Washington, DC 20230, Attention: Brian E. Harris.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue NW., room H-4625, Washington, DC 20230; telephone: (202) 377-1835.

SUPPLEMENTARY INFORMATION:

Further Statement of Program Policy

The National Telecommunications and Information Administration, (NTIA), U.S. Department of Commerce, is charged with administration of the Public Telecommunications Facilities Program (PTFP).[1] In order to assist potential PTFP grant applicants to evaluate the potential for obtaining PTFP grant funding for certain projects, NTIA summarizes below its programmatic concerns and the legal considerations affecting funding of three types of project proposals, *i.e.*,

(1) Educational and instructional projects;

(2) Projects to expand or improve nonbroadcast services; and

(3) Broadcast improvement and augmentation projects. NTIA encourages public comment upon the various issues that it identifies as pertinent to these projects and particularly seeks assistance in evaluating the rapidly evolving needs of the public for federally-assisted telecommunications projects.

Educational and Instructional Projects

Introduction

Public education is an important element in any country's competitive arsenal, and the United States has come to recognize that a well-educated work force is a necessity if it wishes to maintain its high standard of living. In its administration of the PTFP, NTIA has always sought to support educational projects, through its broad-based assistance for public broadcasting services and by funding of nonbroadcast projects offering specific educational or instructional benefits.

NTIA would like to encourage the submission of more applications focusing on educational objectives, and believes that it has sufficient latitude within its current legislative and regulatory mandate to fund a wide range of both broadcast and nonbroadcast projects of this nature. NTIA already has a funding category called Special Applications. [Rules 2301.-Appendix] This category is related to, but apart from, the PTFP funding priorities; only broadcast applications are placed into the formal priority structure. Important educational and instructional projects—whether broadcast or nonbroadcast—can be given preferential consideration, in the Administrator's discretion, within this category.

NTIA, therefore, seeks in this policy statement to identify factors that should be relevant in exercising its discretion to fund educational projects. NTIA welcomes comments on the general topic of how it might most productively expend its resources to assist the nation in achieving its educational objectives and specifically on whether there are factors beyond those it has identified that should be considered.

Background

NTIA is authorized to use PTFP funds to support the purchase of telecommunications equipment to be used by public telecommunications entities to provide educational programming to the public. [Sections 390-393, 397] NTIA has exercised that authority to fund educational projects using both broadcast and nonbroadcast technologies.

In the field of broadcast instruction, PTFP funds are consistently made available to noncommercial television and radio stations, the former of which are generally stations affiliated with the Public Broadcasting Services (PBS). Typically, such PTFP grants have been awarded to local public broadcast stations providing educational services as part of their programming day. In some cases, those services are directed to the school population, sometimes to the public at large.

With respect to nonbroadcast instruction, NTIA has awarded grants to support the activation and extension of satellite networks to distribute instructional programming to a large geographical area, often nationwide. The networks so funded have usually been composed of entities at the college or university level and have offered coursework in advanced fields, such as engineering, science, math, agricultural science and management.

NTIA also has awarded grants to nonbroadcast projects to establish local instructional television networks. The technology involved usually has been microwave, utilized as Instructional Television Fixed Service (ITFS) systems. The entities funded have included regional school systems, state telecommunications organizations, vocational schools, and colleges and universities. Such systems offer many channels of instruction and usually

[1] 47 U.S.C. 390-393, 397. The Communications Act of 1934, as amended (1988). Unless otherwise noted all statutory cites are to Title 47 of the United States Code. PTFP rules are at 15 CFR part 2301 (1989). [Hereinafter Rules 2301.]

reflect the educational concerns of a community or relatively small region. Both satellite networks and ITFS system transmissions are usually one-way video with a two-way, telephone line audio interconnection for question-and-answer periods.

As summarized above, PTFP's own grant history illustrates that education may be brought to citizens in many ways. Of greatest current interest to NTIA is the concept of "distance learning", which NTIA interprets to mean the use of telecommunications to make instruction available to students at locations apart from the teacher.

Funding Considerations

To further its statutory mandate to advance educational goals [sections 390(2), 397(14)], NTIA believes it is timely to reemphasize that education is a significant PTFP program purpose within the meaning of its existing Rules and to amplify how the existing Funding Criteria set forth therein may be applied to such project proposals [Rules 2301.2, .13–.14]

Public Availability

In seeking to define its role in providing funding support, NTIA is attentive to certain threshold considerations. The first is the requirement, arising from PTFP's authorizing statute, that NTIA look only to projects offering instruction "to the public" [sections 392(a)(1), 397(12)]. Thus, NTIA would exclude from its purview televised coursework that is both produced and received within the confines of either a school building or a single campus. In contrast, a distance learning project such as a communications satellite network offers students expert instruction in an advanced subject while they remain hundreds or thousands of miles from the instructor.

Technology

Secondly, as indicated above, NTIA's experience is that education can be provided effectively to distant students through both broadcast and nonbroadcast technologies, and its own legislative authority allows funding of projects within both categories [section 390(1)]. Accordingly, NTIA believes that it should not automatically favor one technology over another with respect to educational project applications, but rather should consider the services to be rendered and the efficiency of the technology proposed.

Project Purposes

Given the extraordinary diversity within the field, NTIA suggests that a project will be considered more highly competitive for funding if it promises to accomplish one or more of the following:

- Reach a large number of potential students, especially those in remote isolated areas;
- Reach students who clearly would never receive the coursework offered without the project;
- Reach a high number of potential beneficiaries (an example might be a project resulting in the activation of a series of satellite transmit earth stations [uplinks] to form the nucleus of a far-ranging course distribution system);
- Meet some special need; *e.g.*, a state mandate to raise substantially the educational achievement level of all students, including those in isolated areas; and
- Assisting the nation's international competitiveness.

NTIA also regards as particularly relevant the participation of minorities and women in providing instructional programming or in receiving it. [Sections 390(2), 393(b)(3)]

The suggested factors are not rigid criteria, nor do they supplant the existing funding criteria and priorities. [Sections 390(1)–(3), 393(b), Rules 2301.13–.14, Appendix] Like all applications, educational/distance learning applications will continue to be evaluated on a case-by-case basis, and other factors might raise the competitiveness of any given application.

Further, NTIA has not made prejudgments about a variety of other issues that educators themselves might view as important to judging the merits of a particular proposal. It welcomes comment on issues such as whether one-way video broadcasting, without the possibility of student feedback, should be considered comparable to more sophisticated two-way educational systems. Similarly, does a course have to be "live" to count as effective distance learning? Is there a "reach threshold"—that is, a number of students who realistically will receive programming—below which NTIA should not consider a project application for funding? Should NTIA reassess what sort of equipment it will consider eligible for funding in educational projects? These, and other questions, will occur to those who address this subject.

Improvement of Nonbroadcast Telecommunications Services. Every year NTIA receives applications that raise the question of whether the applicant is proposing an improvement of an already operating nonbroadcast facility and, thus, whether the project is eligible for PTFP funds pursuant to statutory guidelines. [Section 393(b)(1)–(2)] In contrast to the authority granted to fund improvements of broadcast projects, [sections 390(3), 393(b)(4)] the statute limits funding on nonbroadcast projects to those designed for the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services [or] the expansion of the service areas of existing public telecommunications entities. [Section 393(b)(1)–(2)] NTIA has always interpreted the phrases "extend service to areas" and "expansion of the service areas" to mean an enlargement of geographic scope or a targeting of a new and distinct audience. Nonbroadcast applications submitted by operating entities that do not expand the geographic scope or target a new and distinct audience have been ineligible for funding. However, there are other complexities presented in applying the statutory text to specific circumstances. NTIA has identified six further issues that frequently arise, and on which public comment would be helpful to NTIA's analysis.

1. Issue One: To what extent do an applicant's pre-existing activities affect the eligibility of a nonbroadcast application? Some PTFP nonbroadcast applicants have had some previous telecommunications experience. For example, many colleges have a small studio for producing instructional materials, or a satellite downlink, for on-campus distribution of programming. Should the possession of such facilities disqualify an applicant from obtaining PTFP funds for the establishment of a new nonbroadcast entity on the grounds that the new activity is solely an "improvement" outside the scope of NTIA's funding authority?

Of relevance here is the Act's formal definition of a "noncommercial telecommunications entity" [section 397(97)]; *i.e.*, an organization which disseminates audio or video noncommercial educational, instructional or cultural programming to the public by nonbroadcast means, such as coaxial cable, optical fiber, satellite, microwave, or ITFS transmission. NTIA suggests, therefore, that a vital factor in determining whether an applicant is an already-operating nonbroadcast entity is its ability to distribute programming to the public.

NTIA considers the distribution of programming when confined to either a single building or a single campus to be "closed circuit" transmissions and not dissemination of programming to the public. Thus, an organization that possesses only a satellite downlink, or

that produces instructional programs not disseminated to the public, is not a noncommercial telecommunications entity as PTFP uses the term. Its PTFP application for nonbroadcast equipment—assuming that the equipment would be used to establish a public nonbroadcast service—would therefore be eligible for consideration for PTFP funding.

2. Issue Two: In establishing a new nonbroadcast telecommunications entity, may an applicant use PTFP funds to acquire origination (production) equipment to replace old or non-standard equipment owned by the applicant? Sometimes colleges or universities have studio equipment not used for public telecommunications, as that term is discussed in Issue One, above. The existing equipment may consist only of consumer- or industrial-level quality. Occasionally, it is of broadcast-level quality, but obviously obsolete and fit only for closed-circuit purposes.

NTIA insists that all equipment acquired with PTFP funds be of professional broadcast quality. It does so to ensure that the equipment will provide a high quality, reliable service to the public. NTIA also wants to be assured that the equipment purchased will hold up for the full period of Federal interest in it.

Under these circumstances, NTIA believes that it is appropriate for PTFP to fund new production equipment to replace substandard equipment as part of a project to establish a new nonbroadcast entity. NTIA also supports the purchase of new production equipment to complement existing equipment—even if the latter is of broadcast quality—if the result would be to bring the applicant's production capability to the minimum recognized standard for broadcast operations.

3. Issue Three: Must a nonbroadcast telecommunications entity have studio production capability? Some PTFP applicants request funds to establish a production studio for use with an already-operating nonbroadcast dissemination facility. NTIA suggests that a nonbroadcast telecommunications entity can acquire and distribute programming without the use of studio production equipment and thus studio production capability is not necessary for the operation of a nonbroadcast entity. While production equipment admittedly would strengthen the entity's service, a request to acquire production equipment in these circumstances would appear to be an improvement and therefore not eligible for PTFP funds.

4. Issue Four: In a service expansion project, should the applicant be permitted to use PTFP funds to acquire origination (production) equipment if it is to replace leased, borrowed, or inferior equipment? Periodically, an already operating nonbroadcast entity proposes to expand its existing service area and includes in its PTFP application a request for funds to replace existing production equipment.

With respect to already operating nonbroadcast entities, NTIA suggests that this purchase would represent an improvement in the applicant's capabilities. Therefore, the portion of the application involving production equipment would not be eligible for PTFP funding. The application could be accepted for consideration, but the only equipment eligible for funding would be that required for expansion of the service area, primarily dissemination and interconnection equipment.

NTIA believes that applications for funds to acquire new production equipment rather than relying on leased or borrowed equipment, should also be denied. Customarily, applicants in these situations point out that they do not currently own any production equipment and characterize this part of the project as the "establishment" or as the "completion of construction" of their nonbroadcast facility. As noted in the preceding section, NTIA believes that a nonbroadcast entity does not require a local production facility in order to provide service to the public. Therefore, an applicant already disseminating nonbroadcast services to the public is not eligible to improve its facility by constructing a production studio with the use of PTFP funds.

5. Issue Five: What is the effect of an applicant's activating a nonbroadcast facility between the closing date and the award date, or the effect of such action on the reactivation of a deferred application? Applicants have submitted proposals which indicate that a substantial portion of the proposed nonbroadcast project will be activated after the closing date (when the application is due at NTIA), but before the award period start date. The latter is the date on which the project period begins, generally eight or nine months after the closing date. NTIA has determined that the legal nature of a nonbroadcast application does not change when, after the closing date, the applicant acquires equipment from the proposed equipment list and begins project operations. In such an instance, the application continues to be eligible during the grant cycle for which it is submitted.

The activation of a proposed nonbroadcast facility, however, represents a substantial change in the applicant's circumstances. Activation of the facility creates a "public telecommunications entity", and subsequent applications would be eligible for funding only if the project is an "expansion" of service area as outlined above. In the event the original application is not granted by NTIA, the activation of the nonbroadcast facility disqualifies the applicant from reactivating the application for further consideration in subsequent grant cycles.

6. Issue Six: Should a university that operates a full broadcast standard production facility in one of its colleges be permitted to receive PTFP funds for the establishment of a nonbroadcast production facility in a different college? In the past, NTIA has received requests for nonbroadcast studio equipment in these circumstances, and looks to the following factors to confirm that the project is an eligible service "expansion":

- The dedication of the existing production facility to serving a distinctly different audience from that to be reached by the proposed facility, with a distinctly different curriculum and, perhaps, via a different distribution system;
- The full utilization of the existing facility and its consequent unavailability for the proposed project;
- The prohibitively high cost of renting the existing facility's equipment;
- The expense of interconnecting the existing production facility with that of the proposed project; or,
- The inaccessibility of the existing production facility.

Broadcasting Improvement and Augmentation Projects. NTIA wishes to clarify its policy on local fund matching requirements. In its existing policy NTIA states that it will fund projects to provide first service to a geographic area at up to 75% of the eligible project costs while a presumption of 50% Federal funding would be the general rule for equipment replacement projects. [Section 392(b), 52 FR 31,497 (1987)] The policy further states that the agency will accept showings of extraordinary need such as regional economic problems in agriculture or other industries or emergency situations as justification for submission of a replacement application for more than 50% Federal funding.

NTIA established this policy so it could participate in a greater number of replacement projects. NTIA continues to believe that encouraging greater Federal/local partnership in this way, along with an allowance for hardships and special circumstances as previously

announced, is an efficient means of administering PTFP funds.

NTIA proposes to treat broadcast "improvement" and "augmentation" projects as "replacement" projects that normally are supported only at the 50% Federal funding level. NTIA believes that this addition is consistent with the existing policy and allows for more equitable treatment of applications. Again a showing of extraordinary need for an emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost.

As a related matter, NTIA also takes this opportunity to reaffirm its existing policy on the use of Corporation for Public Broadcasting (CPB) funds to meet the local matching requirements of the PTFP grant. [Section 392(b), Rules 2301.16(a)(2)]. As previously announced, CPB grants are not considered "funds supplied by Federal departments and agencies" within the meaning of the Rules and therefore there is no absolute proscription against the use of such CPB grants. [Rules 2301.16 and 44 FR 30,898 at 30,907 (1979)].

However, NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another federally supported grant program for its local match. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of "clear and compelling need." [Rules 2301.16(a)(4)]. It intends to maintain that standard and to apply it on a case-by-case basis in future years.

Public Comment Period and Other Information. The PTFP policy statement is exempt from the notice and comment requirements by section 553(b)(A) of the Administrative Procedures Act [5 U.S.C. 553 (b)(A)]; it may be made effective immediately upon publication in the Federal Register under 5 U.S.C. 553 (d)(2). However, NTIA believes the public interest will be best served by accepting comments by the deadline specified above under the heading DATES and by issuing a final policy statement based on evaluation of those comments.

Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12291 and therefore subject to the requirement that a Regulatory Impact Analysis be performed. This policy statement is not a major rule because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries * * *; or (3) significant adverse effects on competition, employment, investment, productivity or innovation * * *." Therefore, preparation of a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] does not apply to this proposed policy statement, because, as explained above, the proposed policy statement was not required to be promulgated as a proposed policy statement before issuance as a Final Policy Statement by section 553 of the Administrative Procedures Act [5 U.S.C. 553] or by any other law or regulation. Neither an initial nor final Regulatory Flexibility Analysis was prepared. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Office of Management and Budget has approved the information collection requirements contained in this policy statement pursuant to the Paperwork Reduction Act under OMB Control No. 0660–0003.

Dated: August 5, 1991.

Janice Obuchowski,

Assistant Secretary for Communications and Information.

[FR Doc. 91–18849 Filed 8–8–91; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF COMMERCE

15 CFR Part 2301

[Docket No. 91–0636–1136]

Public Telecommunications Facilities Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is issuing a Notice of Proposed Rulemaking. This Notice is issued to clarify and/or revise the rules and appendix governing administration of the Public Telecommunications Facilities Program (PTFP). Applicant guidelines are clarified or revised under the headings of Priorities, Catastrophic Damage, Additional Information for Applications, Withdrawals and Deferrals, Appropriate Applicant/PTFP Contact, Filing of FCC Applications, Support for Salary Expenses, Premature Obligation of Non-Federal Funds, and Assurances. Grantee responsibilities are clarified under the headings Site Right Documentation and Administration of Federal Grant Funds and Control and Use of Facilities. This action is undertaken to eliminate uncertainty about PTFP requirements.

In a separate Proposal to Issue Further Statement of Program Policy, NTIA provides guidance to PTFP grant applicants on various funding considerations relating to three types of project categories. The proposed policy statement appears as a separate document in this issue of the Federal Register.

DATES: Comments must be submitted on or before September 9, 1991.

ADDRESSES: Persons interested in commenting on these proposed policies and rules must send three copies of any comments to: Office of the Chief Counsel, NTIA/DOC, 14th Street and Constitution Avenue NW., room H–4713, Washington, DC 20230, Attention: Brian E. Harris.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue NW., room H–4625, Washington, DC 20230; telephone: (202) 377–1835.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given of proposed rulemaking in the above matter.

2. The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce (DOC), is charged with the administration of the Public Telecommunications Facilities Program (PTFP). PTFP's primary objective is to "assist, through matching grants, in the planning and construction of public telecommunications facilities in order to * * * extend delivery of public telecommunications services to as many citizens of the United States as possible by the most economical and efficient means * * *, increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and strengthen the capability of existing public television and radio stations * * *."[1]

3. The Secretary of Commerce is charged with the establishment of rules necessary to carry out the PTFP's objectives, including rules relating to the order of Priority in approving construction projects and the amount for each grant. [section 392(e)]. The purpose of this proceeding is to clarify and revise the rules and appendix governing administration of the PTFP. NTIA hopes

[1] 47 U.S.C. 390 (1)–(3). The Communications Act of 1934, as amended (1988). Unless otherwise noted, all statutory cites are to title 47 of the United States Code. PTFP Rules are set out at 15 CFR part 2301 (1989). [Hereinafter Rules 2301.]

that this proceeding will give applicants a clearer understanding of the types of projects PTFP is most likely to fund, and given grantees a better understanding of their responsibilities upon receipt of a grant.

4. The clarifications and revisions may be broken into two broad categories, Applicant Guidelines and Grantee Responsibilities. Clarifications or revisions for Applicant Guidelines are proposed under the following headings—Priorities, Catastrophic Damage, Additional Information for Applications, Withdrawals and Deferrals, Appropriate Applicant/PTFP Contact, Filing of FCC Applications, Support for Salary Expenses, Premature Obligation of Non-Federal Funds, and Assurances. Clarifications or revisions of Grantee responsibilities are proposed under the headings Site Right Documentation and Administration of Federal Grant Funds and Control and Use of Facilities.

5. NTIA hopes that the public comments received on the various matters set out below will help in clarifying the revising PTFP Rules and Priorities. NTIA is also receptive to comments suggesting additional areas where clarification or revision would be beneficial to grantees and applicants.

Applicant Guidelines

A. Funding Priorities

6. PTFP's funding Priorities, listed in the Rules, at the Appendix, have reflected NTIA's perception of its original authorizing legislation. [sections 390–393, 397] NTIA believes that it is desirable to revisit the Priorities in light of changing conditions to ensure that they continue to reflect legislative intent. In doing so, NTIA has tentatively determined that it is appropriate to accord higher status to some types of projects within the present Priorities, to adjust the Priorities of other types of projects, and to end the policy of considering cable television coverage when evaluating television activation projects.

NTIA proposes, therefore, the following specific changes:

7. Priority 1B—Deletion of the reference in the present rules to "cable penetration" in the criteria used to determine the priority of television station activations. Since cable companies are no longer subject to Federal Communications Commission (FCC) "must carry" rules [47 CFR 76.57–76.61 (1986)], the availability of cable and its penetration in a community are no longer necessarily relevant to determining whether a community has public television available to it.

8. Priority 1C—Creation of a new subcategory to enable NTIA to assign Priority 1 status to applications from noncommercial radio stations for receive-only satellite earth stations (downlinks) when such a downlink would bring satellite-distributed public radio programming to the applicant's service area for the first time. NTIA considers such projects to be clearly in the spirit of the PTFP's highest Priority and notes that such projects will extend nationally-distributed programming to areas of the country presently unable to hear such programming.

9. In part, this proposal is a response to the recommendations contained in the January 1990 report of the Public Radio Expansion Task Force [2], on which NTIA was represented. In addition, NTIA sees this proposal as assisting the efforts of the Corporation for Public Broadcasting (CPB) to upgrade small public radio stations because it will enable some of them to improve their circumstances to the point that they become eligible for CPB-awarded Community Service Grants. By giving them access to vast amounts of diversified programming, the downlinks may ease their operational costs, improve their standing in the community, and result in increased donations, expanded underwriting, and generally greater financial stability and independence. NTIA also hopes that this change will materially assist Native American and minority stations in bringing their listeners specialized programming available only by satellite.

10. Priority 2—Clarification of the criteria for Priority 2 by expressly including "urgency" in the discussion of funding considerations. "Urgency of acquisition or replacement" is a fundamental criterion in evaluating such applications, and is explicitly included in the Rules governing funding criteria. [Rules 2301.13(d)(3)] For consistency, NTIA believes that the concept should be reflected in the Appendix discussion of Priority 2.

11. Priority 4—Creation of two subcategories within Priority 4. In order to improve the processing of the large number of applications, NTIA proposes to divide Priority 4 into two sub-categories. Priority 4A is for four types of projects that NTIA thinks should receive enhanced emphasis. The first type is projects for the purchase of urgently needed replacement equipment for stations that cannot qualify for a Priority 2, *i.e.*, stations providing either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area.

12. This subcategory also includes projects to replace or improve equipment at stations that produce a high percentage of the public television and public radio programming that is distributed nationally. In accordance such projects somewhat higher status, NTIA wishes to recognize the important place that these relatively few stations occupy in the national system.

13. NTIA further proposes to extend Priority 4A status to applications for downlinks from radio stations in areas already served by one or more full-service public radio stations if the applicant demonstrates that it would use the downlink to provide its listeners with a program service that does not duplicate the public radio service(s) already available in its area. As with Priority 1C, this action responds to recommendations of the Public Radio Expansion Task Force by enlarging the program offerings of more stations nationwide and increasing the variety of public radio services available to the general public.

14. Priority 4A is also reserved for projects involving public broadcasting stations that, sometime in the preceding five years, have gone on the air without PTFP support and with a complement of equipment well short of what PTFP considers to be basic for effective operation. This type of project will permit such stations to acquire additional basic equipment so as to allow them to offer a higher quality public broadcasting service to the community.

15. In addition, NTIA proposes to create within Priority 4 subcategory 4B. Into this subcategory would fall applications for the improvement and non-urgent replacement of equipment at any public broadcasting station for projects that do not qualify for 4A status. Priority 4B is also for applications to activate public broadcast stations in areas already served by a station or stations with local origination capability, when the proposed stations would not merit substantial Special Consideration because of significant participation by minorities or women. (The latter applications will continue to be assigned to the Special Applications category.) At present, all such activation projects are considered to be Special Applications. NTIA intends to move most of them—*i.e.*, all without notable minority/women participation—to this subcategory so as to concentrate virtually all broadcast projects in the formal Priorities. This reserves the

[2] Public Radio in the 1990s: Fulfilling the Promise, The Report of the Public Radio Expansion Task Force, Dale K. Ouzts, Chairman, January 1990.

Special Applications category almost entirely for nonbroadcast and highly specialized broadcast applications.

B. Catastrophic Damage

16. NTIA wishes to be able to give timely assistance to public broadcast stations that suffer catastrophic damage from natural or manmade causes and need assistance in the replacement of their equipment so as to return to the air and restore public telecommunications services to their communities. Procedures are outlined to enable PTFP to accept applications for such purposes outside of the normal application review cycle. [Rules, 2301.5(g)]

C. Additional Information for Applications

17. To expedite its evaluations of applications, NTIA proposes to eliminate the 45-day period after the closing date during which applicants have been permitted to submit additional information concerning their applications and to make minor changes in the applications. This practice delayed PTFP review of applications by nearly six weeks. Most deficiencies that had to be corrected were quite minor and did not warrant the formal 45-day period. Moreover, the presence of this period clearly encouraged some applicants to regard the closing date as merely an interim deadline, with the "real" deadline being the end of the 45-day period.

18. NTIA retains its ability to request additional information form applicants and establishes a 15-day deadline for applicant response. [Rules 2301.6(a)] In addition, NTIA requires applicants to provide information concerning changes in the status of material information critical to funding decisions whenever such changes occur. [Rules 2301.6(b)] To provide applicants time to adjust to the elimination of the 45-day period, the closing date for FY 1992 applications will be moved somewhat later; *e.g.*, it might be set for January 31, 1992, rather than, as has been customary recently, towards the middle of January.

D. Withdrawals and Deferrals of Applications

19. Previously the rules made no provision for an applicant to withdraw an application, although NTIA traditionally has permitted this to be done. NTIA believes that it is desirable to provide explicitly in the Rules for the formal withdrawal of an application to take place, without affecting future funding decisions. [Rules 2301.9(g)(1)]

20. NTIA also proposes that applicant requests for application deferral be treated as requests for withdrawal and the application returned to the applicant. [Rules 2301.9(g)-(2)] In the past, applicants have occasionally submitted applications and then asked that they be deferred to the next grant cycle. Such requests can be used to gain competitive advantage before the FCC, and the situation lent itself to potential abuse of the spirit of PTFP procedures. The new Rule will not alter the current practice of applications being automatically deferred by NTIA if they are not funded, and applicants may reactivate the deferred applications in the next grant cycle.

21. Finally, NTIA wishes to limit the number of times a deferred application may be reactivated. [Rules 2301.9(h)] NTIA intends to allow only two reactivations of an application. Some applicants have reactivated deferred applications for three, four, or more years. If the application calls for the replacement of equipment, repeated deferrals over a period of years raise a question about the urgency of the need. NTIA believes that after three years of consideration the applicant should reevaluate its commitment to the project and the cogency of its argument in favor of the project. If, after such a reevaluation, an applicant desires to resubmit a proposal, a new application must be submitted and it will be considered as such by PTFP.

E. Appropriate Applicant/PTFP Contacts

22. As a publicly funded discretionary grant program, NTIA must follow procedures that are fair and impartial to all applicants. It seeks, therefore, to avoid the appearance of impropriety that might result from certain seemingly innocent contacts between NTIA/PTFP and applicants, and proposes to incorporate into the Rules a statement formalizing its guidelines on the topic. [Rules § 2301.15(f)] In particular, in order to maintain the integrity of the application review process, NTIA/PTFP staff are not authorized to discuss the merits of an application when it is under review. However, some contacts during the grant review cycle are appropriate, and they are likewise indicated in the Rules. This addition formalizes a policy statement previously distributed to all 1991 applicants.

F. Filing of FCC Applications

23. The Rules stipulate at § 2301.8(a) that, "Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date." If the applicant does not file an application with the FCC, or if the FCC application is dismissed, returned, or denied, NTIA may return the application submitted to PTFP. [Rules 2301.8(f) *and* 2301.9(f)]

24. The primary purpose of the requirement is to ensure that the FCC has ample time in which to review the applications and to notify PTFP whether any necessary authorizations for the project will be issued. NTIA requires grantees to begin construction projects promptly and, therefore, does not award funds for projects that may be long-delayed due to difficulties in obtaining proper FCC authorization. Applications that are delayed in obtaining FCC authorizations are deferred for consideration in the next grant cycle.

25. A second purpose of the requirement is to provide NTIA with appropriate technical documentation with which to evaluate requests for equipment. NTIA recognizes that the FCC now accepts applications for some facilities, such as low power television stations and television translators, only during specified periods of the year. Since NTIA does not control the scheduling of these FCC "windows", it will accept and process grant applications for television translators and low power television facilities before the FCC applications are filed, provided that the PTFP application includes a copy of the application that will be filed at the FCC when the "window" opens. [Rules 2301.8(b)]

26. In addition, ancillary authorizations such as for Studio-Transmitter Links (STLs) and remote pick-up units are closely associated with a station's main authorization and are routinely granted by the FCC. Therefore, NTIA will no longer require that FCC applications for this equipment be filed by the closing date. PTFP, however, requires technical information about the related equipment for its review, and NTIA will require that copies of STL applications as they will be filed at the FCC be included in the PTFP application submitted by the closing date.

27. Similarly, in the cases of C-band downlink facilities and of Very Small Aperture Terminals (VSATs) NTIA will no longer require that the relevant FCC applications be filed at the FCC on or before the PTFP closing date. Two factors have shaped NTIA's decision. First, the technical parameters of both C-band downlinks and VSATs are well established and PTFP can review the grant applications without having the pertinent FCC filings on hand. Second, the FCC does not require licensing of C-band downlinks and its licensing of VSATs has become routine. Although NTIA is relaxing its FCC filing requirement for these facilities, NTIA will continue to require FCC licensing of

both C-band downlinks and VSATs in order to fully protect the Federal interest in the equipment.

28. NTIA emphasizes that, if a PTFP grant is eventually awarded to help purchase the facilities contemplated here, it will require receipt of copies of the FCC authorizations prior to the release of Federal funds to the grantee.

G. Support for Salary Expenses

29. NTIA wishes to clarify its policy concerning the support of salary expenses for construction projects. NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily the funding of salary expenses, even when allowed by law. Moreover, NTIA notes that competition for PTFP funding remains intense. To ensure that PTFP monies are distributed as effectively as possible in this competitive atmosphere, NTIA must weigh carefully its support for any project cost not directly involved with the purchase of equipment.

30. Therefore, as has been the policy for the past few years, NTIA proposes generally not to fund salary expenses, including staff installation costs, pre-application legal and engineering fees, and pre-operational expenses of new entities. NTIA will support such costs only when the applicant demonstrates that exceptional need exists or that substantially greater efficiency would result from the use of staff installation instead of contractor installation. [Rules 2301.17(b)(3)]

31. As regards the installation of transmission equipment, NTIA strongly favors the use of either manufacturer or professional contractor personnel and commonly funds these costs. NTIA believes that the value of transmission equipment and the complicated nature of its installation require expertise beyond that normally found on station staffs. NTIA will rarely support requests for assistance for the installation of studio and test equipment, however, whether that installation is by staff or by contract employees. Such installation is normally of minimum difficulty, and the associated installation costs should be absorbed in the recipient's normal operating budget. Again, NTIA will take into account demonstrations of exceptional need.

H. Premature Obligation of Non-Federal Funds

32. NTIA wishes to remove an inconsistency in the rule on the premature obligation of non-Federal funds. The subject is addressed twice in the existing Rules, and two different dates are identified as the permissible point for applicant obligation of funds. The first stipulated what an applicant may do "after the filing of its application"; the second referred to "the closing date." [Rules 2301.16(a)(3)(c)] Since these can be markedly different dates, the revision removes the ambiguity by using the phrase "the closing date" in both places.

33. NTIA thinks that clarifying the date by which applicants may obligate non-Federal funds could substantially reduce the possibility of an applicant's inadvertently violating the rule.

I. Assurances

34. Changes in the law since the 1987 Rules revision require NTIA to add two further requirements to the list of applicant Assurances in its Rules and application. [Rules, § 2301.5] First, applicants must promise to maintain a drug-free workplace. [15 CFR 26.600–630 (1990)] Second, they must certify that no Federally appropriated funds have been paid to a Federal employee to influence the award of a grant. [31 U.S.C. 1352 (1988)] Language reflecting these requirements is included in the new rules. [Rules 2301.5(d)(2)(xx)] Because these are obligations imposed by law, no public comment is sought on this addition to the Rules.

Grantee Responsibilities

J. Site Rights Documentation

35. NTIA recently revised its requirements pertaining to documentation of leases and site rights for PTFP projects. NTIA believes that an attorney who is familiar with the local laws should review this aspect of a grantee's documentation. Accordingly, the program now usually requires only an opinion letter containing PTFP-specified certifications and signed by the grant recipient's attorney. The change formalizes the procedure instituted in 1990. [Rules 2301.5(d)(2)(ix)]

K. Administration of Federal Grant Funds and Control and Use of Facilities

36. In 1987, when the PTFP Rules were last revised, some sections were deleted in an effort to simplify the rules. Experience in administering PTFP grants since then indicates the desirability of reinserting some of the deleted sections. This action places all of PTFP's rules and requirements in one convenient document, and NTIA believes that reinserting these rules will assist applicants, PTFP staff, and grant recipients. NTIA welcomes public comment on these rules, in particular whether they will serve the intended purpose of facilitating administration of PTFP grants.

37. The first item of reinserted material requires applicants to make copies of their applications available at their offices for public inspection during normal business hours. [Rules 2301.11(a)] The second states the method by which the final total project cost shall be calculated. [Rules 2301.16(d)] It is needed to give grant recipients a comprehensive understanding of the administration of their awards. The other reinserted sections are explained below:

- *§ 2301.18—Payment of the Federal Grant* was reinserted to conform the PTFP Rules to OMB Circular A–110, Attachment I, ¶7.
- *§ 2301.19—Retention of Records* will help NTIA protect the 10-year Federal reversionary interest created by § 392(g).
- *§ 2301.20—Completion of Projects* and *§ 2301.21, Annual Status Report for Construction Projects* are reinserted to give grant recipients guidance in writing their status and final reports and to help NTIA ascertain that the grant funds are being used for their intended purposes.
- *§ 2301.22—Conditions Attached to the Federal Grant* sets out grant conditions that are unique to PTFP. The award document *incorporates* the Uniform Administrative Requirements of OMB Circular A–110 and 15 CFR part 24.
- *§ 2301.23—Grant Suspensions, Terminations, and Transfers* are reinserted to give applicants and grantees notice of PTFP grant suspension, termination and transfer procedures.
- *§ 2301.24—Equipment* ensures that federal funds are used to provide the highest quality service possible.

38. Some revisions have been made in the reinserted sections. They are minor, reflecting changes in the relevant PTFP guidelines or elaborations of points that NTIA decided needed clarification.

Public Comment Period and Rulemaking Requirements

The PTFP Rules described above relate to a Federal grant-in-aid program; thus, under section 553(a)(2) of the Administrative Procedures Act [5 U.S.C. section 553(a)(2)], they may be issued and made effective immediately without notice of proposed rulemaking, opportunity for comment, or 30-day deferral of effectiveness after publication. However, NTIA believes the public interest will be best served by accepting comments by the deadline specified above under the heading **DATES** and by issuing Final Rules based on evaluation of those comments.

Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12291 and therefore subject to the requirement that a Regulatory Impact Analysis be performed. This regulation is not a major rule because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries * * *; or (3) significant adverse effects on competition, employment, investment, productivity or innovation * * *." Therefore, preparation of a Regulatory Impact Analysis is not required.

A Regulatory Flexibility Analysis is not required under The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because as explained above, the rules were not required to be promulgated as proposed rules before issuance as final rules by § 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that this rule will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

The Office of Management and Budget has approved the information collection requirements contained in this rule pursuant to the Paperwork Reduction Act under OMB Control No. 0660-0003.

List of Subjects in 15 CFR Part 2301

Administrative practice and procedure, Grant programs—communications, Telecommunications.

Dated: August 5, 1991.

Janice Obuchowski,

Administrator.

For the reasons set out above, it is proposed to amend 15 CFR chapter XXIII by revising Part 2301 to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—Definitions, Program Purposes and Special Consideration

Sec.

Subpart B—Eligibility and Application Procedures

Subpart C—Federal Financial Participation

Subpart D—Accountability for Federal Funds

Subpart E—Control and Use of Facilities

Subpart F—Waivers

Appendix to Part 2301—Special Application and Priorities

Authority: Public Telecommunications Financing Act of 1978, Pub. L. 95-567, 92 Stat. 2405, codified at 47 U.S.C. 390-394, 397-399b; and the Public Broadcasting Amendments Act of 1981, Pub. L. 97-35, 95 Stat. 725, and the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, 5001, 100 Stat. 82, 117 (1986).

Subpart A—Definitions, Program Purposes and Special Consideration

§ 2301.1 Definitions.

Act means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390-394 and 397-399b, as amended.

Administrator means the Assistant Secretary for Communications and Information of the United States Department of Commerce.

Agency means the National Telecommunications and Information Administration of the United States Department of Commerce.

Broadcast means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

Construction (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

Department means the United States Department of Commerce.

FCC means the Federal Communications Commission.

Federal interest period means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the official completion date of the project.

Nonbroadcast means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast are Instructional Television Fixed Service (ITFS), teletext, and cable.

Noncommercial educational broadcast station or "public broadcast station" means a television or radio broadcast station that is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

Noncommercial telecommunications entity means any enterprise that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and that has been organized primarily for the purpose of disseminating audio or video noncommercial educational, cultural or instructional programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

Non-Federal financial support means the total value of cash and the fair market value of property and services received.

(1) As gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, and related activities, from any source other than (i) the United States or any agency or instrumentality

of the United States; or (ii) any public broadcasting entity; or,

(2) As gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, or payments in exchange for services or materials with respect to the provision of educational, cultural or instructional television or radio programs.

Nonprofit (as applied to any foundation, corporation, institution or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Operational cost means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), including capital outlay and debt service.

Pre-operational expenses means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

PTFP means the Public Telecommunications Facilities Program, which is administered by the Agency.

PTFP Director means the Agency employee who recommends final action on public telecommunications facilities applications grants to the Administrator.

Public telecommunications entity means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunication services to the public.

Public telecommunications facilities means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

Public telecommunications services means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications. It does not include essentially sectarian programming.

Sectarian means that which has the purpose or function of advancing or propagating a religious belief.

State includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

System of public telecommunications entities means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

§ 2301.2 Program purposes.

(a) The Agency's determination to fund an application and the amount of the grant awarded shall be governed by whether the application will, in the following order of priority, result in:

(1) The establishment of new public telecommunications facilities to extend services to areas not currently receiving such services;

(2) The expansion of the service areas of existing public telecommunications entities; or,

(3) The improvement of the capabilities of existing licensed public broadcasting stations to provide public telecommunications services.

(b) Notwithstanding paragraph (a) of this section, the Agency may award a grant to an applicant which is otherwise eligible for funding, but whose proposal does not specifically meet any of the purposes enumerated above. Such grant, however, must fulfill the overall objectives of the Act.

§ 2301.3 Special consideration.

In accordance with Section 392(f) of the Act, the Agency will give special consideration to applications that foster ownership or control of, operation of, and participation in public telecommunications entities by minorities and women. The Agency interprets "ownership" and "owned" as meaning control of an entity through the possession or exercise of the normal incidents of ownership, such as participation on the governing board or holding corporate offices. The Agency will accord special consideration only where women and/or minorities hold more than fifty (50) percent control of the applicant. The Agency will consider the composition of the applicant's governing body, management levels, or policy-making positions.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Eligible organizations and projects.

(a) *Eligible applicants (Construction Grants).* In order to apply for and receive a PTFP Construction Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A state or local government or agency, or a political or special purpose subdivision of a state.

(b) *Eligible applicants (Planning Grants).* In order to apply for and receive a PTFP Planning Grant, an applicant must be:

(1) Any of the organizations described in paragraph (a) of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

(c) *Eligible projects.* An applicant that is eligible under paragraph (a) or (b) of this section may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

(d) Applicants must certify whether they are delinquent on any Federal debt. In accordance with OMB Circular A–129, an applicant with outstanding accounts receivable with any agency of the Federal Government will not receive an NTIA grant until the debt is paid or arrangements to repay which are satisfactory to the government agency in question are made. This includes debts incurred by sub-units of the applicant other than the sub-unit that is applying to NTIA, and includes debts owed to any agency of the Federal Government, not just to the Department of NTIA.

(e) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(f) *Preliminary determination of eligibility.* In order to obtain a preliminary determination of applicant or proposal eligibility, a prospective applicant must send a letter requesting such determination to the Agency.

(1) The request letter should be addressed to: PTFP Director, NTIA/DOC, 14th Street and Constitution Avenue, NW., room H–4625, Washington, DC 20230.

(2) In the request letter the prospective applicant must:

(i) Describe the proposed project;

(ii) Include a copy of the organization's articles of incorporation and bylaws, or other similar documentation, which specifies the nature and powers of the prospective applicant (unless the prospective applicant has received a PTFP grant within the last ten (10) years, in which case only a copy of the most recent Annual Report or Quarterly Performance Report and any changes in the articles of incorporation and bylaws since the last grant must be provided); and,

(iii) If the prospective applicant is a nonprofit foundation, corporation, institution, or association which has not received a PTFP grant within the previous ten (10) years, provide a copy of a letter from the Internal Revenue Service granting the prospective applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(3) A favorable preliminary determination of eligibility does not guarantee that the Agency will accept a future application for filing or award a subsequent grant.

(4) A prospective applicant may appeal an unfavorable preliminary determination of eligibility to the Administrator under § 2301.10.

§ 2301.5 Application procedures.

(a) *Address.* The following address should be used for all communications with the Agency: Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue, NW., room H–4625, Washington, DC 20230.

(b) Application materials may be obtained from the address listed in paragraph (a).

(c) *Closing date.* The Administrator shall select and publish in the **Federal Register** a date by which applications for funding in a current fiscal year are to be filed.

(d) *New applications.* (1) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in the annual **Federal Register** announcement requesting applications at or before 5 p.m. on the closing date.

(2) A complete application must include an original and one copy of the Agency application form with the signature of an officer of the applicant who is legally authorized to sign for the applicant, and all the information required by the Agency application materials, which shall include:

(i) A brief narrative statement (of not more than four (4) pages) describing the proposed project with particular attention to satisfying the appropriate funding criteria as listed in §§ 2301.13 or 2301.14 of these Rules;

(ii) If the applicant has not received a PTFP grant within the previous ten (10) years, a copy of the applicant's articles of incorporation, bylaws, a list of the members of the board of directors, and other similar documentation specifying the nature and powers of the applicant, except that state or local government entities need only provide a reference to the statutory or other authority under which they operate;

(iii) If the applicant is a nonprofit foundation, corporation, institution or association which has not received a PTFP grant within the previous ten (10) years, a copy of a letter from the Internal Revenue Service granting the applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(iv) If the applicant received a PTFP grant within the previous ten (10) years, then it must reference the number of the previous grant, provide a copy of the most recent Annual Report or Quarterly Performance Report submitted to the PTFP, and submit a copy of any changes in the applicant's articles of incorporation or bylaws which have taken effect since the last grant was awarded;

(v) If the applicant applied for a preliminary determination of eligibility and received a positive determination, it may submit a copy of the official notification from the PTFP in lieu of the eligibility requirements of this section;

(vi) Documentation that the applicant will have, when needed, the funds to construct any facilities for which the Agency has granted matching funds;

(vii) Documentation that the applicant will have the funds necessary to operate and maintain those facilities once constructed;

(viii) Documentation of the amount of Federal and non-Federal financial support received by the applicant organization during each of the preceding three fiscal years or for the length of time the organization has been in existence if less than three years;

(ix) Applications requesting transmission or interconnection equipment should include an opinion letter from the applicant's attorney stating that the applicant will have either fee simple title or a long-term (i.e., ten-year) lease, or an option to obtain same, to any real or personal property necessary for the installation of the equipment. Applications for studio or test equipment should include similar materials regarding main transmission sites to ensure that a grant recipient will be able to utilize PTFP-funded equipment to provide public telecommunications services throughout the Federal interest period. The applicant must have the right to occupy, construct, maintain, operate, inspect, and remove the project equipment without impediment, and nothing must prevent the Federal government from entering the property and reclaiming or securing PTFP-funded property. The Agency reserves the right to review an applicant's site rights documents if deemed necessary;

(x) An inventory of all equipment (if any) currently owned by the applicant that corresponds to the type of equipment requested in the current application or that would be closely associated with the proposed project. The inventory should include manufacturers' names, model numbers, production years, and the dates of acquisition;

(xi) Within the narrative or as an optional exhibit no longer than two pages, a five-year plan outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(xii) If special consideration is requested under § 2301.3, information detailing the basis for the request on the exhibit form provided by the Agency;

(xiii) Copies of letters transmitting a copy of the application to each of the entities required under § 2301.7;

(xiv) Significant documentation supporting the applicant's request for equipment, including as necessary the proper FCC authorization(s) cited in §§ 2301.8 and 2301.9, and if applicable, documentation indicating high incidence of repair or periods of inoperability;

(xv) Evidence that the applicant has participated (or, in the case of a planning grant, will participate) in comprehensive planning for the proposed project, including community involvement, an evaluation of alternate technologies and coordination with state telecommunications agencies, if any;

(xvi) Assurance that during the period in which the applicant possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the applicant will not use or allow the use of the Federally funded equipment for essentially sectarian purposes;

(xvii) A detailed explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency;

(xviii) A copy of any Environmental Impact Statement or other environmental assessment document prepared in conjunction with the proposed project as may be required by any Federal, state, or local law or regulation;

(xix) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency;

(xx) Assurance of compliance with all provisions of the Drug-Free Workplace Requirements and the Certifications for Contracts, Grants, Loans and Cooperative Agreements found in the application form;

(xxi) Assurance that the applicant has taken into account all non-Federal sources of financial support for this project; that the non-Federal share stated by the Applicant as being available for this project is the maximum amount available from such sources; and that the applicant will initiate and complete the work within the applicable time frame after receipt of approval from the Agency; and,

(xxii) Assurance that the applicant will make the most economical and efficient use of the Federal funds.

(e) *Deferred applications.* (1) An applicant may reactivate an application deferred by the Agency during the prior year under § 2301.15 if the applicant has not substantially changed the stated purpose of the application.

(2) An applicant may reactivate a deferred application only during the two consecutive years following the application's initial acceptance for filing by the Agency.

(3) To reactivate a deferred application, the applicant must file the information described in paragraph (e)(4), of this section below, whether mailed or hand delivered, at or before 5 p.m. on the closing date.

(4) To file a complete reactivation request, the applicant must submit an original and one copy of the following:

(i) Part I of the approved Agency application form with the original signature of an officer of the applicant who is legally authorized to sign for the applicant, with a notation of the file number of the earlier application;

(ii) A brief narrative statement (not more than four (4) pages) describing the project proposed in the current application;

(iii) An update of the availability of operating funds and the necessary non-Federal share of the project;

(iv) An update of the financial information required by paragraph (d)(2)(viii) of this section;

(v) A revised listing of current eligible project costs, if necessary;

(vi) A revised inventory as described in paragraph (d)(2)(x) of this section. Applicants having previously submitted an inventory need submit only updated information;

(vii) A revised five-year plan as described in paragraph (d)(2)(xi) of this section outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(viii) If special consideration is requested under § 2301.3, current information detailing the basis for the request on the exhibit form provided by the Agency;

(ix) Copies of letters transmitting a copy of the current application to each of the entities required under § 2301.7;

(x) An updated explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency; and,

(xi) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency.

(f) Deferred applications that are resubmitted under paragraph (e) of this section and contain substantial changes will be considered as new applications and must comply with the requirements of § 2301.5(d). All deferred applications may be subject to a second determination of eligibility.

(g) *Applications resulting from catastrophic damage.* (1) An application may be filed with a request for a waiver of the closing date, as provided in § 2301.25, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster and is in dire need of assistance in funding replacement of the damaged equipment.

(2) The request for a waiver must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(3) A waiver will not be granted if it is determined that the applicant has not carried proper insurance.

(4) Applications filed and accepted pursuant to this paragraph must contain all of the elements stipulated in paragraph (d) or (e), above, and will be subject to the same review and evaluation process followed for applications accepted for filing in the normal application cycle, although the Administrator may establish a special timetable for review and evaluation to permit an appropriately timely decision.

§ 2301.6 Additional information.

(a) The Agency may request from the applicant any additional information that the Agency deems necessary or pertinent. Applicants must provide to the Agency two copies of any additional information that the Agency requests within fifteen (15) days of the date of the Agency's letter.

(b) Applicants must immediately provide to the Agency two copies of information received after the closing date that materially affects the application, including:

(1) State Single Point of Contact and State Telecommunications Agency comments on applications;

(2) FCC file numbers and changes in the status of FCC applications necessary for the proposed project;

(3) Changes in the status of proposed local matching funds, including notification of the passage (including reduction or rejection) of a proposed state appropriation or receit (or denial) of a proposed substantial matching gift;

(4) Changes in the licensee, in the licensee's board structure, in the applicant's IRS section 501(c)(3) status, or in the applicant's Articles of Incorporation or Bylaws;

(5) Changes in the status of proposed production, participation or distribution agreements (if relevant to the proposed project);

(6) Changes in lease or site rights agreements; and

(7) Complete failure of major items of equipment for which replacement costs have been requested or changes in the status of the needs of the equipment requested.

(c) Applicants must place copies of any additional information submitted to the Agency in the copy of the application available for public inspection pursuant to § 2301.11.

(d) Potential grant recipients may be subject to the following Department Pre-Award Administrative Requirements and Policies:

(1) Name Check forms (Form CD–346) may be used to ascertain background information on key individuals associated with potential grantees. The Name Check requests information to determine if any key individuals in the organization have been convicted of, or are under indictment or have been charged with criminal offenses such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity;

(2) Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

§ 2301.7 Service of applications.

On or before the closing date all new or deferred applicants must serve a copy of the application on the following agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554;

(b) The state or local agency(-ies), if any, having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and,

(c) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

§ 2301.8 Federal Communications Commission authorization.

(a) Each applicant whose project required FCC authorization must file an application for that authorization on or before the closing date. Recommended submission date for applications to the FCC is at least 60 days prior to the closing date. The applicant should clearly identify itself as a PTFP applicant.

(b) In the case of FCC authorizations where it is not possible or practical to submit the FCC license application with the PTFP application, such as C-band satellite uplinks, low power television stations and translators, remote pickups, studio-to-transmitter links, and Very Small Aperture Terminals, a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.

(c) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(d) If the project is to be associated with an existing station, FCC operating authority for that station must be current and valid.

(e) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(f) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may return the application.

(g) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

§ 2301.9 Acceptance for filing.

After the closing date, the Agency will examine each application for timeliness, completeness, eligibility, and FCC authorization.

(a) The Agency will publish a notice in the **Federal Register** listing all applications accepted for filing. Acceptance of an application for filing does not preclude subsequent return or disapproval of the application, nor does it assure that the application will be funded. Publication merely operates to qualify the application to compete for funding with other applications accepted for filing.

(b) The notice of acceptance for filing will also include a request for comments on the applications from any interested party. The procedural requirements of § 2301.11 will be set forth in the notice.

(c) Substantially incomplete applications will be returned by the Agency.

(d) Any application, amendment to an application, or request to reactivate a deferred application that is filed after the closing date will be returned by the Agency.

(e) When the Agency finds that either the applicant or the project is ineligible under the Act and/or these Rules, it will return the application and inform the applicant of the denial of eligibility.

(f) If the Agency finds that a proposed project requires authorization from the FCC and that the applicant did not tender its application for such authorization, the Agency will return the application.

(g) With respect to requests to withdraw or to defer applications fro consideration:

(1) Applicants may request withdrawal of an application from consideration for funding. Withdrawn applications will be returned by the Agency.

(2) Applicants may not request that the Agency defer an application for subsequent consideration. A request for deferral of an application will be considered a request for withdrawal.

(h) Deferred applications that are submitted for reactivation for a third time will be returned by the Agency.

§ 2301.10 Appeals.

(a) Within 15 calendar days after the date on which the Agency sends a written notice to an applicant denying the eligibility of the applicant or the proposed project, or notifying an applicant that its application is substantially incomplete, the applicant may file a written notice of appeal with the Administrator at the address listed in § 2301.5(a). Applicants may not appeal the return of applications filed after the closing date.

(b) The notice of appeal must show that the denial of eligibility or determination of incompleteness is factually or legally incorrect. If the applicant relies on any written documents or other materials to dispute the Agency's action, the applicant should list and attach a copy of each item or indicate that the Agency has a copy of the item in its possession.

(c) Upon receipt of the notice of appeal, the Administrator will review the appeal in consultation with the Chief Counsel and the PTFP Director and will render a written decision within 30 calendar days.

(d) If the Administrator sustains the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant.

(e) All decisions of the Administrator made under paragraph (c) of this section are final.

§ 2301.11 Public comments.

(a) The applicant shall make a copy of its application available at its offices for public inspection during normal business hours.

(b) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.5(a).

(c) The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

§ 2301.12 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult with:

(a) The FCC, with respect to functions that are of interest to, or affect other functions of the FCC;

(b) The Corporation for Public Broadcasting, public broadcasting agencies, organizations, other agencies, and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act; and,

(c) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

§ 2301.13 Funding criteria for construction applications.

In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider the following factors, each of which has equal weight:

(a) The extent to which the project meets the program purposes set forth in § 2301.2 as well as the specific program priorities set forth in the appendix of these Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available.

(2) Evaluated alternative technologies and the bases upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern or substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for which the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and

(k) The readiness of the FCC to grant any necessary authorization.

§ 2301.14 Funding criteria for planning applications.

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local State, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results

§ 2301.15 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments filed by interested parties and replies thereto, and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration;

(3) Return the application as ineligible pursuant to § 2301.9 with a notice of the grounds and reason; or,

(4) Return applications which remain unfunded after consideration by the Agency for three years.

(b) Upon the approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each State educational television, radio, or telecommunications agency, if any, in any state any part of which lies within the service area of the applicant's facility;

(3) The FCC; and,

(4) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

(c) If the Agency decides to fund an application, the award documents will include grant terms and conditions and whatever other provisions are required by Federal law or regulations, or which may be deemed necessary or desirable for the achievement of program purposes.

(d) An applicant or an objecting party may not appeal to the Administrator the Agency's determination to fund or not fund a particular application.

(e) Information about grant terms and conditions or other applicable laws and regulations is available from PTFP at the address listed in § 2301.5(a).

(f) Written and oral contacts between PTFP staff members and applicants and their representatives during the application review period are governed by the following:

(1) Members of the PTFP staff are not authorized to discuss the merits of an application when it is under review.

(2) Applicants are expected to notify PTFP of events that occur after the closing date and that materially affect the application, including those items requested in § 2301.6(b).

(3) Other permissible contacts include:

(i) Appeals of PTFP determinations of the eligibility of an application, pursuant to § 2301.10;

(ii) Responses to adverse comments filed by members of the public pursuant to § 2301.11; and

(iii) Discussion of matters relating to other PTFP awards an organization may have.

(4) Nothing in this section should be interpreted as preventing PTFP staff from requesting an applicant to submit information that may not have been included in the original submission.

Subpart C—Federal Financial Participation

§ 2301.16 Amount of the Federal grant.

(a) *Construction grants.* (1) A Federal grant for the construction of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document. Such amount may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute.

(3) After the closing date, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment. No funds from the Federal share of the total project cost may be obligated until the award period start date. If an applicant or recipient obligates Federal Award funds before the start date, the Department may refuse to offer the award or, if the award has already been granted, terminate the grant.

(4) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(b) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(c) Project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date. Accepting title to donated equipment prior to the closing date is considered ownership or acquisition of equipment.

(d) If the actual costs incurred in completing the planning or construction project are less than the estimated project total costs, which were the basis for the Agency's determination of the initial grant award, the Agency shall reduce the amount of the final grant award so that the final grant award bears the same ratio to the actual cost of the project as the initial grant award bore to the estimated total project costs. In no case will the final grant award exceed the initial grant award.

§ 2301.17 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under the Act:

(a) *Equipment and supplies.* Each year, the Agency will review its list of ineligible equipment and supplies. A copy of the currently applicable list of ineligible equipment will be provided with every application package for PTFP grants.

(b) *Other expenses ineligible for funding.* (1) Buildings and modifications to buildings to house eligible equipment and fences surrounding them are not themselves eligible for funding under this program, except that small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities are eligible for funding;

(2) Land and land improvements;

(3) Salaries of personnel employed by an operating public telecommunications entity and other operational costs, except

(i) for planning projects (see section 392(c) of the Act); or,

(ii) to the extent that an applicant can demonstrate exceptional need or that substantially greater efficiency would result from staff installation.

(4) Moving costs required by relocations;

(5) Such other expenses as the Agency may determine prior to the award of a grant.

§ 2301.18 Payment of the Federal grant.

(a) The Department will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this Part. Additionally:

(1) With regard to a public telecommunications entity requiring FCC authorization, the Department will not make any payment until it receives confirmation that the FCC has granted any necessary authorization;

(2) The Department will not make any payment under an award unless and until any special award conditions stated in the award documents are met; and

(3) An agreement to share ownership of the grant equipment (*e.g.*, a joint venture for a tower) must be approved by the Agency before any funds for the project will be released.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, the Department will make payments to the grantee in such installments consistent with the percentage of project completion. As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.

(c) When an applicant completes a construction project, the Agency will assign a completion date that the Agency will use to calculate the termination date of the Federal interest period. The completion date will be the date on which the grantee certifies in writing that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.20. If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.

Subpart D—Accountability for Federal Funds

§ 2301.19 Retention of records.

(a) Each recipient of assistance under this program shall keep intact and accessible the following records:

(1) A complete and itemized inventory of all public telecommunications facilities under the control of the grantee, whether or not financed, in whole or in part, with Federal funds;

(2) Complete and current financial records that fully disclose the total amount of the project; the amount of the grant; the disposition of the grant proceeds; and the amount, nature and source of non-Federal funds associated with the project; and,

(3) All records specified in Office of Management and Budget Circular A–110 (for educational institutions, hospitals and nonprofit organizations) and 15 CFR

part 24 (for State and Local Governments).

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records. The marking shall include the PTFP grant number and a unique inventory number assigned by the grantee.

§ 2301.20 Completion of Projects.

(a) Upon completion of a planning project, the grantee must promptly provide to the Administrator two copies of any report or study conducted in whole or in part with funds provided under this program by sending the copies to the Agency. This report shall meet the goals and objectives for which the grant is awarded and shall follow the written instructions and guidance provided by the Agency. The grant award goals and objectives are stated in the planning narrative as amended and are incorporated by reference into the award agreement. The Agency shall review this report for the extent to which those goals and objectives are addressed and met, for evidence that the work contracted for under the grant award was in fact performed, and that the written instructions and guidance provided by the Agency, if any, were followed. If this report fails to address or meet any grant award goals or objectives, or if there is no evidence that the work contracted for was in fact performed, or if this report clearly indicates that the written instructions and guidance provided by the Agency, if any, were disregarded, then the Agency may pursue remedial action. Remedial action includes, but is not limited to, demand for submission, in whole or in part, of an acceptable final report. An unacceptable final report may result in the establishment of an account receivable by the Department.

(b) Upon completion of a construction project, the grantee must:

(1) Certify that the grantee has acquired, installed and begun operating the project equipment in accordance with the project as approved by the Agency and has complied with all terms and conditions of the grant as specified in § 2301.5;

(2) Certify that the grantee has obtained any necessary FCC authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same;

(3) Certify that the facilities have been acquired, that they are in operating order and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency and document same;

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty and provide the Agency with a copy of its insurance policy;

(5) Certify, if not previously provided, that the grantee has acquired all necessary leases or other site rights required for the project;

(6) Certify, if appropriate, that the grantee has qualified for receipt of funds from the Corporation for Public Broadcasting;

(7) Provide a complete and accurate final inventory of equipment acquired under the project and a final accounting of all project expenditures, including non-equipment costs (*e.g.*, installation costs); and

(8) Execute and record a final priority lien reflecting the completed project and assuring the Federal government's reversionary interest in all equipment purchased under the grant project for the duration of the Federal interest period.

§ 2301.21 Annual status report for construction projects.

(a) Recipients of construction grants are require to submit an Annual Status Report for each grant project that is in the Federal interest period. The Reports are due no later than April 1 in each year of the period. In the Annual Status Report, the grant recipient must certify:

(1) That it remains an eligible entity as defined in the PTFP Rules and Regulations;

(2) That it continues to use the equipment purchased under the grant to provide public telecommunications services as approved by the Agency for the original purposes of the grant;

(3) That it continues to hold any FCC authorizations necessary to operate the project apparatus;

(4) That it continues to protect all equipment purchased under the grant with adequate insurance coverage;

(5) That it remains in compliance with all of the terms and conditions of the grant; and

(6) That no significant changes have occurred during the reporting period with respect to any of the terms and conditions of the grant.

(b) In addition, the grant recipient must:

(1) Provide information as to whether any discrimination complaints are pending against it and whether, during the reporting period, any adverse judgments have been rendered against it because of discriminatory practices—

(i) Pending complaints must be described and their status given; adverse judgments must be summarized and a description given of what action the recipient has taken or is taking to remedy the effects of the adjudged discrimination;

(ii) If the recipient is a non-profit institution, or a college or university, discrimination complaints and adverse judgments must be reported for the entire organization, not just for the broadcast station. If the recipient is a state or municipal agency, discrimination complaints and adverse judgments should be reported only for the agency that received the Federal grant money, not the entire state or municipal government;

(2) Certify, if it is an academic institution, that it does not discriminate in its admissions policies or in the opportunities it affords to persons to participate in the receiving or providing of services (*Nota Bene*: this certification applies to the entire academic institution, not just to the entity that was the subject of the grant);

(3) Submit a separate Annual Status Report with an original signature for each grant it has received that is still in the Federal interest period; and

(4) Take whatever steps may be necessary to ensure that the Federal government's reversionary interest continues to be protected for the 10-year period by recording, when and where required, a lien continuation statement and reporting that fact in the Annual Status Report.

Subpart E—Control and Use of Facilities

§ 2301.22 Conditions attached to the Federal grant.

When an applicant is awarded a Federal grant under the PTFP, the applicant (now the grantee) takes the grant subject to certain conditions concerning the uses of the Federal monies and the equipment obtained with those monies. The conditions are those listed at § 2301.15(c) plus the following specific conditions:

(a) In order to assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the period of Federal interest, which shall be no less than ten (10) years from the date of completion of the project, all grantees shall:

(1) Execute and record a document establishing that the Federal government has a priority lien on any

facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located;

(2) File a certified copy of the recorded lien with the Administrator ninety days after the grant award is received;

(3) Not dispose of or encumber its title or other interests in the equipment acquired under this grant and will, if applicable, file any continuation statements necessary to preserve the Federal Government's secured interest in the equipment acquired with Federal funds.

(b) During the construction of a project and the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.4, above;

(2) Obtain and continue to hold any necessary FCC authorization(s);

(3) Use the Federal funds for which the grant was made for the equipment and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the agency in writing;

(4) Use the facilities and any monies generated through the use of the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public, of any advertisement, unless such broadcast or transmission is expressly and specifically permitted by law or authorized by the FCC;

(6) Hold appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect and remove such apparatus, sufficient to assure continuity of operation of the facility;

(7) Maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project, if they receive express written approval for this different policy from the Director. The grantee will purchase flood insurance (in communities where such insurance is available) if the facilities will be constructed in any areas that has been identified by the Secretary of Health and Human Services as having special flood hazards;

(8) Submit, in triplicate, within 30 calendar days of the award date, to the Agency a construction schedule or a revised planning timetable that will include the information requested in the grant terms and conditions in the award package;

(9) Comply with 15 CFR part 24 and the provisions of the Office of Management and Budget Circular A–128 (for State and Local Governments and political subdivisions) and OMB Circulars A–110 and A–122 and 15 CFR part 29b (for institutions of higher education, hospitals and other nonprofit organizations) for the procurement of equipment and services funded in whole or in part with Federal monies;

(10) Remit interest earned on advances of Federal funds to the Agency in accordance with all relevant Federal laws and regulations;

(11) State when advertising for bids for the purchase of equipment that the Federal Government has an interest in facilities purchased with Federal funds under this program which begins with the purchase of the facilities and continues for ten (10) years after the completion of the project;

(12) Submit, during the construction of this project, both performance reports and the required financial reports, in triplicate, on a calendar year quarterly basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof. Reports are due no later than 30 days following the end of each reporting period. The Quarterly Performance Reports should contain the following information:

(i) A comparison of actual accomplishments during the reporting period with the goals and dates established in the Construction or Planning Schedule for that reporting period;

(ii) Description of any problems that have arisen or reasons why established goals have not been met;

(iii) Actions taken to remedy any failures to meet goals; and

(iv) Construction projects must also include a list of equipment purchased during the reporting period compared with the equipment authorized. This information must include manufacturer, make and model number, brief description and number of the items purchased, cost;

(13) Promptly complete the project and place the public telecommunications facility into operation;

(14) Permit inspections during normal working hours by the Agency and the Comptroller General of the United States or their duly authorized representatives, of the public telecommunications facilities acquired with Federal financial assistance or of any books, documents, papers, and records relating to those facilities;

(15) Comply with Federal statutes relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), which prohibits discrimination on the basis of race, color or national origin; (ii) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (iii) section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, which prohibits discrimination on the basis of handicaps; (iv) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (v) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (vi) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (vii) section 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (viii) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (ix) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (x) the requirements of any other nondiscrimination statute(s) which may apply to the application.

(16) Obtain the Agency's prior approval for substantial changes in the approved grant project, including but not limited to the following:

(i) Costs (including planning costs),

(ii) Essential specifications of the equipment,

(iii) The engineering configuration of the project,

(iv) Extensions of the approved grant award period, and

(v) Transfers of a grant award to a successor in interest, pursuant to § 2301.23(c)(1).

(17) Comply with all applicable Federal laws, rules or regulations relating to the project.

(c) The Agency will allow the acquisition of facilities by lease; however, several provisions must be followed:

(1) The lease must be for a term of years not greater than the remaining useful life of the facilities nor less than ten (10) years following completion of the project (including renewal options);

(2) The cost of the lease must not be more than the total of the non-Federal share of the matching funds;

(3) The actual amount of the lease must not be more than the outright purchase price would be; and

(4) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal Government through the Agency has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(d) During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian.

§ 2301.23 Grant suspensions, terminations, and transfers.

(a) *Suspension or termination for cause.* If a grantee fails to meet any conditions attached to the grant, as specified in sections 2301.15(c) and 2301.22 of this part, the Agency reserves the right to recommend any appropriate action including, but not limited to:

(1) Suspending a particular grant in whole or in part and withholding further payments under that grant, pending corrective action by the grantee;

(2) Prohibiting a grantee from incurring additional obligations of funds, pending corrective action by the grantee;

(3) Where the grantee cannot (or will not) comply with the condition (or conditions) attached to a particular grant, terminating the grant and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grant bore to the project;

(4) Where the condition (or conditions) is also attached to other grants that the grantee has received from the Agency, suspending payments under all these other grants;

(5) Where the condition (or conditions) is also attached to other grants that the grantee has received from the Agency, terminating all these other grants and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grants bore to the projects for which they were granted.

(b) *Termination for convenience.* When the Agency and the grantee agree that the continuation of the project would not produce beneficial results commensurate with the expenditure of further Federal funds, the parties may terminate the grant, in whole or in part, with all the conditions and on an effective date that the parties have mutually agreed in writing.

(c) *Transfers.* If necessary to further the purpose of the Act, the Agency may approve transfers as follows:

(1) *Transfer of grant.* The Agency may transfer a grant to a successor in interest or subsidiary corporation of a grantee in cases where a similar operational entity remains in control of the grant and the original objectives of the grant remain in effect.

(2) *Transfer of equipment.* Where the grant equipment is no longer needed for the original purposes of the project, the Agency may transfer the equipment to the Federal government or an eligible third party, in accordance with Office of Management and Budget guidelines.

(3) *Transfer of Federal interest to different equipment.* The Agency may transfer the Federal interest in PTFP-funded equipment to other eligible equipment presently owned or to be purchased by the grantee with non-Federal monies.

(i) Equipment previously funded by PTFP that is within the Federal interest period, may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(ii) The same item can be used only once to substitute for the Federal interest; however, it may be used to cover grants if the request for each is submitted at the same time.

(iii) A lien on equipment transferred to the Federal interest must be recorded in accordance with § 2301.22 of the PTFP Rules. A copy of the lien document must be filed with the PTFP within 60 days of the date of approval of the transfer of Federal interest.

(iv) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in the new equipment must be at least equal to the Federal interest in the original equipment.

(d) *Termination by buy-out.* A grantee may terminate the PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

§ 2301.24 Equipment.

All equipment, which a grantee acquires under this program, shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment that is compatible with broadcast equipment wherever the two types of apparatus interface.

Subpart F—Waivers

§ 2301.25 Waivers.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act.

Appendix to Part 2301—Special Applications and Priorities

Special Applications

NTIA possesses the discretionary authority to recommend awarding grants to eligible broadcast and nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed below. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to identifiable ethnic or linguistic minority audiences, service to the blind or deaf, electronic text, and nonbroadcast projects offering educational or instructional services).

Priorities

Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area. Within this category, NTIA establishes three subcategories:

A. *Projects that include local origination capacity.* This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects that do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

C. *Projects that provide first nationally distributed programming.* This subcategory includes projects that provide satellite

downlink facilities to noncommercial radio stations that would bring nationally distributed public radio programming to a geographic area for the first time.

Priority 1 and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved, *i.e.*, areas that do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

An applicant proposing to plan or construct a facility to serve a geographical area that is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.

Priority 2—Replacement of Basic Equipment of Existing Essential Broadcast Stations. Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment in existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the urgent replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting non-availability of parts.) Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

The distinction between Priority 2 and Priority 4 is that Priority 2 is for the urgent replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (*i.e.*, where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority 4.

Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area. Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.

Priority 4—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations. Projects eligible for consideration under this category include the replacement of obsolete or worn-out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority 2, applicants seeking to replace or improve basic equipment under Priority 4 should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records). Within this category, NTIA establishes two subcategories:

4A. This subcategory includes the replacement and improvement of basic equipment at existing public broadcasting stations that do not provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area and therefore cannot qualify for Priority 2 consideration.

Under Priority 4A, NTIA will consider applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria. NTIA will also consider applications that improve as well as replace urgently needed equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

This subcategory will also enable the acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule unique to its service area, not one merely duplicative of what is already available, and certify that it will continue to provide such a schedule for a minimum of five (5) years after completion of the project.

The final projects included in this subcategory would enable the acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP. This is intended to assist stations that went on the air within the prior five (5) years with a complement of equipment well short of what the Agency considers as the basic complement.

4B. This subcategory includes the improvement and non-urgent replacement of equipment at any public broadcasting station. Also included would be the activation of a broadcast station in an area already served by one or more stations with local origination capability when the applicant does not qualify for Special Consideration for minority/women participation.

Priority 5—Augmentation of Existing Broadcast Stations. Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios or facilities in other locations within a station's service area that would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This subcategory would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

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Part VI

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 19

Uniform Rules of Practice and Procedure; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 91-9]

Uniform Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") reguires that the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board of Governors"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and National Credit Union Administration ("NCUA") (collectively, the "Agencies") develop a set of uniform rules and procedures for administrative hearings ("Uniform Rules"). Section 916 further reguires that the Agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

In compliance with the mandate of section 916, this final rule makes uniform those rules concerning formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the OCC and each of the other Agencies is adopting complementary "Local Rules" to supplement the Uniform Rules in order to address some or all of the following: Formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within the OCC and the other Agencies. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Barrett Aldemeyer, Senior Attorney, Legislative and Regulatory Analysis Division (202/874-5090), or Daniel Stipano, Assistant Director, Enforcement and Compliance Division (202/874-4800).

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of FIRREA, Public Law No. 101-73, 103 Stat. 183 (1989), requires that the OCC, Board of Governors, FDIC, OTS, and NCUA develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that

"(g)iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings."

1 CFR 305.87-12.

To comply with the requirements of section 916, the OCC and the other financial institutions regulatory Agencies issued for comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The joint proposed rule contained one set of Uniform Rules applicable to all the Agencies and separate Local Rules applicable to each agency.

The OCC has received comments on the joint proposed rule and is now issuing a final rule. This final rule is intended to standardize procedures for formal administrative actions common to at least four of the five Agencies and to facilitate administrative practice before the Agencies.

Subpart A of the OCC's final rule in 12 CFR part 19, the "Uniform Rules," sets forth the uniform rules of practice and procedure for those formal enforcement actions which are required by statute to be determined on the record after an opportunity for an agency hearing and which are common to at least four of the Agencies. The Uniform Rules in subpart A of this final rule generally replace the procedures governing formal adjudications in 12 CFR part 19, subparts A through J, which were adopted on April 6, 1990 (55 FR 13014). Each agency is adopting substantially similar Uniform Rules.

The OCC's Local Rules in subparts B through L of this final rule address the following topics: Certain formal enforcement actions not addressed in the Uniform Rules, informal actions which are not subject to the APA, and procedures to supplement or facilitate the processing of administrative enforcement actions within the OCC. The Local Rules replace the procedures in subparts K through O of part 19 concerning certain formal and informal adjudications, practice before the OCC, and formal investigations. The revised text of subparts C, D, E, J, and K corresponds to the text of subparts K, M, L, N, and O, respectively. In the event of inconsistency with the provisions of subpart A, the Local Rules govern. The Local Rules also provide additional rules applicable to formal adjudications, discovery depositions, and other document filings with the OCC.

B. Subpart-by-Subpart Summary and Discussion of Uniform and Local Rules

Subpart A—Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, including rules on commencing enforcement proceedings, filing and service of papers, motions, discovery, prehearing conferences, public hearings, hearing subpoenas, conflict of interest, ex parte communications, rules of evidence, and post-hearing procedures.

Subpart B—Filings With the Comptroller

This is a new subpart which incorporates the procedures found in § 19.11. All materials to be filed with or referred to the Comptroller or the administrative law judge under part 19 are to be filed with the Hearing Clerk. This does not include requests for document discovery or responses to such requests because these documents are not required to be filed with the administrative law judge or the Comptroller.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

This subpart applies to informal hearings afforded an institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by the Comptroller. The text of this subpart corresponds to the text of former subpart K, which is incorporated into this subpart with minor changes.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

This subpart applies to informal hearings that may be held by the Comptroller, pursuant to the authority of the Securities Exchange Act of 1934 ("Exchange Act"), to grant certain exemptions from the securities laws. The text of this subpart corresponds to the text of former subpart M, which has

been incorporated into this subpart with minor changes.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

This subpart governs formal adjudications pursuant to the authority of the Exchange Act to take disciplinary actions against banks acting as a municipal securities dealer, a government securities broker or dealer, or a transfer agent, or persons associated with, or seeking to become associated with the above entities.

The text of this subpart corresponds to the text of the former subpart L, which has been incorporated into this subpart with minor changes. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of charges. Except as provided in this subpart, the Uniform Rules in subpart A apply to these proceedings.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

This subpart governs formal adjudications pursuant to the authority of section 21B of the Exchange Act (15 U.S.C. 78u–2), as added by section 202 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101–429). These provisions provide for the issuance of civil money penalties against banks acting as a municipal securities dealer, a government securities broker or dealer, or a transfer agent, or persons associated with, or seeking to become associated with the above entities.

The provisions of subpart A apply to these proceedings. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of assessment.

Subpart G—Cease-and-desist Authority Under the Securities Laws

This subpart governs informal adjudications pursuant to the authority of section 21C of the Exchange Act (15 U.S.C. 78u–3), as added by section 203 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101–429). These provisions provide for the institution of cease-and-desist proceedings against a bank for violation of certain provisions of the Exchange Act.

These proceedings are not "required by statute to be determined on the record after opportunity for an agency hearing," and thus are not "formal" adjudications subject to the APA. See 5 U.S.C. 554(a). The OCC has determined, however, that these proceedings should be conducted in a manner comparable to a formal adjudication to afford affected parties with the procedural protection of the APA.

This subpart provides, therefore, that the provisions for formal adjudications in subpart A are applicable to these proceedings. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, any request for a private hearing must be filed within 20 days of service of the notice of charges.

Subpart H—Change in Bank Control

This subpart governs formal adjudications under section 7(j) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1817(j)) concerning the review of a determination by the Comptroller disapproving an application to acquire control of a national bank.

Upon issuance of the OCC's written disapproval of a change-in-control application, the applicant may file a written request for a hearing within ten days after service of the notice of disapproval. To preserve the applicant's right to a hearing, an answer must also be filed within 20 days of the date of the notice, specifically denying those portions of the notice which are disputed. If the applicant fails to file a timely answer, Enforcement Counsel may file a motion for a default judgment. Absent a finding of good cause for failure to file a timely answer, the administrative law judge shall issue a recommended decision containing the findings and relief sought in the notice.

As provided in § 19.18(a)(2) of subpart A, change-in-control proceedings commence with the issuance of an order by the Comptroller. This hearing order will set forth the OCC's jurisdictional authority over the proceeding and will address the applicant's request for hearing. Except as provided in this subpart, the Uniform Rules in subpart A apply to these proceedings.

Subpart I—Discovery Depositions and Subpoenas

This subpart provides that a party may take the deposition of an expert or of another person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding and where there is a need for the deposition. While permitting the depositions of experts and persons having direct knowledge of the matters at issue in a proceeding, this provision is not intended to allow unlimited deposition discovery or the taking of senior OCC officials' depositions, unless those individuals have direct knowledge about the facts of the case. Rather, it is intended to permit limited deposition discovery of experts and persons having direct knowledge of the facts who may be called on to testify at the administrative hearing.

This subpart also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena may file a motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service.

Subpart J—Formal Investigations

This subpart and the conflict of interest provision of the Uniform Rules (§ 19.8 of subpart A) apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate, pursuant to the authority of the banking laws and the Exchange Act. The text of this subpart corresponds to the text of former subpart N, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules.

Subpart K—Parties and Representational Practice Before the OCC: Standards of Conduct

This subpart sets forth rules relating to parties and representational practice before the OCC, including the imposition of disciplinary sanctions against individuals who appear before the OCC in a representational capacity in an adjudicatory proceeding under this part or in other matters relating to a client's rights, privileges, or liabilities. The text of this subpart corresponds to the text of former subpart O, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules and to clarify the scope of the proceedings.

Subpart L—Equal Access to Justice Act

This subpart directs the reader to 31 CFR part 6 which contains the regulations governing Equal Access to Justice claims with respect to OCC formal adjudicatory proceedings.

C. Comments

In response to the June 17, 1991, joint notice of proposed rulemaking, the OCC and the other Agencies received three comment letters. The five Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules. The specific questions and

objections pertaining to the Uniform Rules are discussed below.

(1) One commenter stated that, in light of the decision of the United States Court of Appeals for the Fifth Circuit in *Amberg* v. *FDIC*, July 2, 1991, the provisions in § 19.19 requiring an administrative law judge to grant a default order against a respondent who has not filed a timely answer are not consistent with the holding in *Amberg*. The commenter suggested that changes be made to the section to allow a late filing if good cause is shown and recommended that "good cause" be defined consistent with the definition appearing in the Federal Rules of Civil Procedure.

The Uniform Rules allow an administrative law judge to extend time limits for good cause (§ 19.13) and require that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 19.19), thereby permitting respondents an opportunity to oppose such a motion. Thus, the rules address the concerns raised by the commenter. However, to alleviate confusion, the Agencies have changed the wording of the final default rule to make this process more explicit.

(2) A commenter suggested that uniform rules should also be drafted for formal investigations, Equal Access to Justice Act implementation, sanctions, and a number of other procedures.

The lack of uniformity in these areas is based on the scope of section 916 of FIRREA. As noted above, the purpose for the enactment of section 916 was the improvement and expedition of formal enforcement proceedings subject to the APA. *Cf.* 1 CFR 305.87–12; H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 442 (1989). Accordingly, the inclusion of non-APA proceedings would exceed the statutory mandate of section 916 and would present practical implementation problems as well. For example, the Uniform Rules do not contain provisions for formal investigations. This is because investigatory proceedings are not formal adjudicatory proceedings subject to the APA. In addition, the statutory authority for formal investigations arises in several statutes, and the Agencies have differing policies concerning the frequency, length, and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency. Therefore, the Agencies have not changed these provisions.

(3) The same commenter suggested that the Agencies consider adopting rules concerning the publication of enforcement orders and actions to promote uniformity.

Congress recently addressed this concern when it amended 12 U.S.C. 1818(u) in Title XXV of the Crime Control Act of 1990, Public Law No. 101–647, 104 Stat. 4789. The Agencies are required by statute to publish all final orders and other documents subject to enforcement action. Each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Rooms or libraries of each agency. In addition, each of the Agencies frequently issues press releases concerning recent cases and decisions. Therefore, no change in the Uniform Rules is warranted.

(4) An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. The Agencies determined that broad document discovery would be permitted generally; however, they recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. See *Sims* v. *National Transportation Safety Board*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *N.L.R.B.*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm.*, 549 F.2d 28, 33 (7th Cir. 1977). Further, the APA contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3rd Cir. 1974), *cert. denied* 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance between the due process interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and public constituencies which each agency serves, as well as each agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity, and quantity of enforcement actions brought by each agency; the methods of litigation and opportunity for settlement in such actions; the structure and available resources of each regulator; and the supervisory procedures developed internally by each agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experiences of the OCC, the Board of Governors, and the OTS resulted in a finding that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing complexity of enforcement actions, where typically multiple counts, multiple parties, and several types of enforcement actions are combined into one, it was found that discovery depositions could be useful in aiding both respondents and the regulator in resolving cases expeditiously. Discovery depositions for the OCC, the Board of Governors, and the OTS, however, are limited to witnesses that have factual, direct, and personal knowledge of the matters at issue and expert witnesses. The FDIC and the NCUA determined that the interests of respondents in further pretrial disclosure in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document-intensive nature of their proceedings.

(5) A commenter suggested that the definition of "decisional employee" in § 19.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous 12 months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicting interest.

The Agencies did not adopt this suggestion. The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress has already drawn the line defining conflicts of interest in this context. The Agencies determined that following the APA formulation was the preferred course of action.

(6) A commenter recommended that § 19.18(b) be modified to require that an agency set forth in a notice not only those facts showing that an agency is entitled to relief of some kind but also those facts required for the particular relief requested.

The Agencies believe that § 19.18(b) meets the standards for notice pleading

set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this is sufficient pleading for administrative proceedings. See *First National Monetary Corporation* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corporation* v. *Federal Trade Commission*, 498 F.Supp. 772, 780 (D.Del. 1980). Therefore, no change in the Uniform Rules is warranted.

(7) A commenter suggested that the Uniform Rules regarding severance of proceedings are unduly stringent in light of the severity of sanctions at stake. The commenter stated that any inconsistency or conflict in the position of respondents should warrant severance without the necessity of weighing any countervailing interests. The commenter further stated that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

The Agencies noted that a similar weighing test for severance is applied by Federal courts in criminal cases, see *e.g.*, *Roach* v. *National Transportation Safety Board*, 804 F.2d 1147, 1151 (10th Cir. 1986), *cert. denied*, 496 U.S. 1006 (1988), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independent of the total volume of adjudications at any particular time. Therefore, the Agencies did not change this provision.

(8) Section 19.24(c) provides that privileged documents are not discoverable. A commenter questioned the right of Enforcement Counsel to assert the deliberative process privilege pursuant to § 19.24(c) on grounds that, in some instances, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggested instead that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that § 19.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies believe that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege already are available to respondents without modifying § 19.24. Section 19.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that grounds exist to challenge Enforcement Counsel's assertion of the deliberative process privilege, respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of Enforcement Counsel as to the basis of the assertion of the privilege, to conduct an inspection of the assertedly privileged material *in camera*, and then to rule whether the privilege can be maintained. For these reasons, no change has been made in this provision.

(9) A commenter suggested that the determination to seal a document pursuant to § 19.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was also proposed that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate this last concern by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) and 1786(s)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest. Thus, the Agencies disagree with the commenter that this determination should be subject to review by an administrative law judge.

(10) A commenter suggested deleting § 19.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter stated that the provision violates normal evidentiary standards and raises due process concerns.

The first sentence of § 19.36(c)(2) cross-references § 19.36(a), which makes agency prepared documents subject to the same evidentiary standards as those that are applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies feel that requiring a sponsoring witness for such documents needlessly consumes judicial resource and impedes the hearing process. Therefore, no change has been made in this provision.

(11) A commenter suggested that, under § 19.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to an administrative law judge's recommended decision and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 19.39(b)(2) is amended to read that "No exception *need* be considered * * *" [emphasis added]

However, the Agencies do not believe that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

D. Additional Modifications to the Uniform and Local Rules

In conjunction with the other financial institutions regulatory agencies, the OCC is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the OCC and its operations. Thus, the OCC is replacing the terms "Agency Head" and "Agency" with "Comptroller" and "OCC," and is restricting the "scope" provision to those statutes subject to OCC jurisdiction. Further conforming changes have been made to the definitions of Local Rules, Uniform Rules, and OFIA. Each of the other Agencies has made similar changes.

The purpose of these changes is to make the Uniform Rules easier to understand and use. These changes do not affect the substance of the Uniform Rules.

The OCC is making various other minor technical and conforming changes to the Uniform and Local Rules to

improve the clarity and consistency of the rules, including the following.

To ensure consistency of administration, § 19.161(c), which provides for waiver of hearing if an applicant fails to file an answer or a request for hearing on a change-in-bank-control disapproval, has been amended to provide the same procedures as in § 19.19(c) of the Uniform Rules.

Section 19.170 has been amended to clarify that discovery depositions may be taken only in formal administrative actions instituted under subpart A or other actions subject to the procedures of subpart A. Discovery depositions may not be taken in informal administrative actions under subparts C and D which are not subject to the rules in subpart A.

To reflect the changes made in subparts A and H concerning change-in-bank-control proceedings, technical amendments to 12 CFR 5.50 (Change in bank control) will be made in a separate final rule.

E. Immediate Effective Date

The Comptroller is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of a substantive regulation not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). See *Central Lincoln Peoples' Utility Dist.* v. *Johnson*, 735 F.2d 1101, 1117 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. See *Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 881–888 (3rd Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be impracticable and contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the five agencies to (1) establish their own pool of administrative law judges and (2) to develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act [August 9, 1989]." In order to properly address these two requirements, the Uniform Rules and the administrative law judge pool should be implemented in a coordinated and harmonious fashion. If the pool is established prior to the rules, the administrative law judges may be required to adjudicate some cases under prior regulations before the Uniform Rules are effective. The result would be confusion for parties and a lack of uniformity in adjudication directly contrary to the purpose of section 916. It would, therefore, be impracticable and contrary to the public interest to delay the effective date for implementation of the Uniform Rules.

F. Applicability of Revised Rules to Enforcement Proceedings

Part 19, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of Part 19 applies to any proceeding commenced prior to August 9, 1991 unless, with the consent of the presiding officer, the parties agree to have the proceeding governed by revised Part 19.

G. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. The purpose of the OCC's revised regulation is to secure a just and orderly determination of administrative proceedings. Because the OCC already has in place rules of practice and procedure, this final rule imposes only minor burdens on all institutions, regardless of size.

H. Executive Order 12291

The OCC has determined that this final rule does not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this final rule (1) will not have an annual effect on the economy of $100 million or more, (2) will not result in a major increase in the cost of financial institution operations or governmental supervision, and (3) will not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation, within the meaning of the executive order.

This final rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. Because the OCC already has in place rules of practice and procedure, this final rule should result in no significant additional burden for regulated institutions. The final rule would not have a significant impact on competition or impose other significant economic burdens.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Ex parte communications, Hearing procedure, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the common preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations, is revised to read as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

Subpart A—Uniform Rules of Practice and Procedure

Sec.

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 504, 505, 1817, 1818, 1820, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78*l*(h) and (i), 78o–4(c), 78o–5, 78q–l, 78u, 78u–2, 78u–3, and 78w; and 31 U.S.C. 330.

Subpart A—Uniform Rules of Practice and Procedure

§ 19.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Office of the Comptroller of the Currency ("OCC") should issue an order to approve or disapprove a person's proposed acquisition of an institution;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the OCC is the appropriate agency;

(e) Assessment of civil money penalties by the OCC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate agency for any violation of:

(1) Any provision of law referenced in 12 U.S.C. 93, or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 93;

(2) Sections 22 and 23 of the Federal Reserve Act ("FRA"), or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(3) Section 106(b) of the Bank Holding Company Amendments of 1970, pursuant to 12 U.S.C. 1972(2)(F);

(4) Any provision of the Change in Bank Control Act of 1978 or any regulation or order issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(5) Any provision of the International Lending Supervision Act of 1983 ("ILSA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(6) Any provision of the International Banking Act of 1978 ("IBA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(7) Section 5211 of the Revised Statutes (12 U.S.C. 161), pursuant to 12 U.S.C. 164;

(8) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(9) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(10) The terms of any final or temporary order issued under section 8 of the FDIA or any written agreement executed by the OCC, the terms of any condition imposed in writing by the OCC in connection with the grant of an application or request, certain unsafe or unsound practices, breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

§ 19.2 Rules of construction.

For purposes of this part:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 19.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Comptroller* means the Comptroller of the Currency or a person delegated to perform the functions of the Comptroller of the Currency under this part.

(d) *Decisional employee* means any member of the Comptroller's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Comptroller or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(e) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the OCC in an adjudicatory proceeding.

(f) *Final order* means an order issued by the Comptroller with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(g) *Institution* includes any national bank, District of Columbia bank, or Federal branch or agency of a foreign bank.

(h) *Institution-affiliated party* means any institution- affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(i) *Local Rules* means those rules promulgated by the OCC in the subparts of this part excluding subpart A.

(j) *OCC* means the Office of the Comptroller of the Currency.

(k) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the OCC, the Board of Governors of the Federal Reserve System ("Board of Governors"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA").

(l) *Party* means the OCC and any person named as a party in any notice.

(m) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (g) of this section.

(n) *Respondent* means any party other than the OCC.

(o) *Uniform Rules* means those rules in subpart A of this part that are common to the OCC, the Board of Governors, the FDIC, the OTS, and the NCUA.

(p) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 19.4 Authority of the Comptroller.

The Comptroller may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 19.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold schedule and/or pre-hearing conferences as set forth in § 19.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Comptroller shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Comptroller a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 19.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the OCC or an administrative law judge*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the OCC if such attorney is not currently suspended or debarred from practice before the OCC.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the OCC.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the OCC, file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 19.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or

submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 19.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 19.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 19.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Comptroller, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Comptroller until the date that the Comptroller issues his or her final decision pursuant to § 19.40(c), no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the Comptroller, the administrative law judge, or a decisional employee. The Comptroller, administrative law judge, or decisional employee shall not knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, the Comptroller or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Comptroller or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 19.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 19.25 and 19.26, shall be filed with OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Comptroller or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Comptroller or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½×11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 19.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the OCC and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Comptroller or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 19.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the

proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 19.10(c).

(c) *By the Comptroller or the administrative law judge.*—(1) All papers required to be served by the Comptroller or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 19.6 shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 19.6, the Comptroller or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 19.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Comptroller or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Comptroller or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 19.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Comptroller pursuant to § 19.38, the Comptroller may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party after notice and opportunity to respond is afforded all non-moving parties or on the Comptroller's or the administrative law judge's own motion.

§ 19.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the OCC is the party requesting the subpoena. The OCC shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the OCC.

§ 19.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any OCC representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 19.16 OCC's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the OCC to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the OCC to conduct or continue any form of investigation authorized by law.

§ 19.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other

failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 19.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA, 12 U.S.C. 1817(j)(4), a proceeding governed by this subpart is commenced by issuance of a notice by the Comptroller.

(ii) The notice must be served by the Comptroller upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Comptroller.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the OCC's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the OCC is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 19.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*— (1) *Effect of failure to answer.* Failure of a reepondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Comptroller based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 19.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Comptroller or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 19.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the notice.

§ 19.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 19.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law

judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must be filed with the Comptroller.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Comptroller, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 19.29 and 19.30.

§ 19.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by subpart I of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 19.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the OCC's rules in Part 4 of this chapter implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 19.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 19.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 19.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district

court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 19.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 19.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 19.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 19.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with

any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 19.28 Interlocutory review.

(a) *General rule.* The Comptroller may review a ruling of the administrative law judge prior to the certification of the record to the Comptroller only in accordance with the procedures set forth in this section and § 19.23.

(b) *Scope of review.* The Comptroller may exercise interlocutory review of a ruling of the administrative law judge if the Comptroller finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 19.23. Any party may file a response to a request for interlocutory review in accordance with § 19.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Comptroller for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Comptroller under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Comptroller.

§ 19.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Comptroller issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Comptroller. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 19.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 19.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion may

require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 19.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) Effect of failure to comply. No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 19.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Comptroller, in his or her discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA [12 U.S.C. 1817(j)(4)], within 20 days from service of the hearing order, any respondent may file with the Comptroller a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 19.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 19.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 19.26(c).

§ 19.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) Order of hearing. Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree, the administrative law judge shall fix the order.

(3) Stipulations. Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 19.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of

Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or the Comptroller shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institutions regulatory agency or by a state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Comptroller.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 19.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 19.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 19.37(b), the administrative law judge shall file with and certify to the Comptroller for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 19.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 19.38, a party may file with the Comptroller written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Comptroller if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each

exception, and the legal authority relied upon to support each exception.

§ 19.40 Review by the Comptroller.

(a) *Notice of submission to the Comptroller.* When the Comptroller determines that the record in the proceeding is complete, the Comptroller shall serve notice upon the parties that the proceeding has been submitted to the Comptroller for final decision.

(b) *Oral argument before the Comptroller.* Upon the initiative of the Comptroller or on the written request of any party filed with the Comptroller within the time for filing exceptions, the Comptroller may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Comptroller's final decision. Oral argument before the Comptroller must be on the record.

(c) *Comptroller's final decision.* (1) Decisional employees may advise and assist the Comptroller in the consideration and disposition of the case. The final decision of the Comptroller will be based upon review of the entire record of the proceeding, except that the Comptroller may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Comptroller shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Comptroller orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Comptroller shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Comptroller or required by statute, upon any appropriate state or Federal supervisory authority.

§ 19.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Comptroller may not, unless specifically ordered by the Comptroller or a reviewing court, operate as a stay of any order issued by the Comptroller. The Comptroller may, in his or her discretion, and on such terms as he or she finds just, stay the effectiveness of all or any part of an order pending a final decision on a petition for review of that order.

Subpart B—Procedural Rules for OCC Adjudications

§ 19.100 Scope.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceedings under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

§ 19.101 Delegation to OFIA.

Unless otherwise ordered by the Comptroller, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge assigned to OFIA.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

§ 19.110 Scope.

This subpart applies to informal hearings afforded to any institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by a notice or order issued by the Comptroller.

§ 19.111 Suspension or removal.

The Comptroller may serve a notice of suspension or order of removal or prohibition on an institution-affiliated party. A copy of such notice or order will be served on the bank, whereupon the institution-affiliated party involved must immediately cease service to the bank or participation in the affairs of the bank. The notice or order will indicate the basis for suspension, removal or prohibition and will inform the institution-affiliated party of the right to request in writing, to be received by the OCC within 30 days from the date that the institution-affiliated party was served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the bank does not, or is not likely to, pose a threat to the interest of the bank's depositors or threaten to impair public confidence in the bank. The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Administrator in the OCC district in which the bank in question is located, or to the Deputy Comptroller for Multinational Banking, Office of the Comptroller of the Currency, Washington, DC 20219, if the bank is supervised by the Multinational Banking Department. The request must state specifically the relief desired and the grounds on which that relief is based.

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall notify the petitioner requesting the hearing and the OCC's Enforcement and Compliance Division of the date, time, and place fixed for the hearing. The hearing will be scheduled to be held not later than 30 days from the date when a request for hearing is received unless the time is extended at the written request of the petitioner. The District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall extend the hearing date only for a specific period of time and shall take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The Comptroller shall appoint one or more OCC employees as the presiding officer to conduct the hearing. The presiding officer(s) shall not have been involved in the proceeding, a factually related proceeding or the underlying enforcement action in a prosecutorial or investigative role. The OCC's Enforcement and Compliance Division shall appoint an attorney to represent the OCC at the hearing.

(c) *Waiver of oral hearing.* The petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions. The petitioner must present the submissions to the presiding officer not later than ten days prior to the hearing, or within such shorter time period as the presiding officer permits, along with a signed document waiving the statutory right to appear and make oral argument.

(d) *Hearing procedures*—(1) *Conduct of hearing.* Hearings under this subpart are not subject to the provisions of

subpart A of this part or the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(2) *Powers of the presiding officer.* The presiding officer shall determine all procedural issues that are governed by this subpart. The presiding officer may also permit or limit the number of witnesses and impose time limitations as he or she deems reasonable. The informal hearing will not be governed by the formal rules of evidence. All oral presentations, when permitted, and documents deemed by the presiding officer to be relevant and material to the proceeding and not unduly repetitious will be considered. The presiding officer may ask questions of any person participating in the hearing and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Copies of affidavits, memoranda, or other written material to be presented at the hearing must be provided to the presiding officer and to the other parties in the oral argument not later than ten days prior to the hearing or within such shorter time period as permitted by the presiding officer.

(ii) If the petitioner or the appointed OCC attorney desires to present oral testimony or witnesses at the hearing, he or she must file a written request with the presiding officer not later than ten days prior to the hearing, or within a shorter time period as permitted by the presiding officer. The names of proposed witnesses should be included, along with the general nature of the expected testimony, and the reasons why oral testimony is necessary. The presiding officer generally will not admit oral testimony or witnesses unless a specific and compelling need is demonstrated. Witnesses, if admitted, shall be sworn.

(iii) In deciding on any suspension, the presiding officer shall not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charges which are outstanding. In deciding on any removal, the presiding officer shall not consider challenges to or efforts to impeach the validity of the conviction. The presiding officer may consider facts in either situation, however, which show the nature of the events on which the indictment or conviction was based.

(4) *Record.* A transcript of the proceedings may be taken if the petitioner requests a transcript and agrees to pay all expenses or if the presiding officer determines that the nature of the case warrants a transcript. The presiding officer may order the record to be kept open for a reasonable period following the hearing, not to exceed five business days, to permit the petitioner or the appointed OCC attorney to submit additional documents for the record. Thereafter, no further submissions may be accepted except for good cause shown.

§ 19.113 Recommended and final decisions.

(a) The presiding officer shall issue a recommended decision to the Comptroller and shall serve promptly a copy of the decision on the parties to the proceeding. The decision shall include a summary of the facts and arguments of the parties. Within ten days of service, parties may submit to the Comptroller comments on the presiding officer's recommended decision.

(b) Within 60 days following the hearing or receipt of the petitioner's written submission, the Comptroller shall notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated or modified. The Comptroller's decision must include a statement of reasons supporting the decision. The Comptroller's decision is a final and unappealable order.

(c) A finding of not guilty or other disposition of the charge on which a notice of suspension was based does not preclude the Comptroller from thereafter instituting removal proceedings pursuant to section 8(e) of the FDIA (12 U.S.C. 1818(e)) and subpart: A of this part.

(d) A removal or prohibition by order remains in effect until terminated by the Comptroller. A suspension or prohibition by notice remains in effect until the criminal charge is disposed of or until terminated by the Comptroller.

(e) A suspended or removed individual may petition the Comptroller to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. The petition must state specifically the relief sought and the grounds therefor, and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

§ 19.120 Scope.

The rules in this subpart apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12 (h) and (i) of the Exchange Act (15 U.S.C. 78/ (h) and (i)), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g), or from section 13 or 14 of the Exchange Act (15 U.S.C. 78/(g), 78m or 78n), or whether to exempt from section 16 of the Exchange Act (15 U.S.C. 78p) any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this subpart are banks whose securities are registered pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78/(g)). The Comptroller may deny an application for exemption without a hearing.

§ 19.121 Application for exemption.

An issuer or an individual (officer, director or shareholder) may submit a written application for an exemption order to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons therefor, including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. The Securities and Corporate Practices Division shall inform the applicant in writing whether a hearing will be held to consider the matter.

§ 19.122 Newspaper notice.

Upon being informed that an application will be considered at a hearing, the applicant shall publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state: the name and title of any individual applicants; the type of exemption sought; the fact that a hearing will be held; and a statement that interested persons may submit to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard. The applicant shall promptly furnish a copy of the notice to the Securities and Corporate Practices Division, and to bank shareholders.

§ 19.123 Informal hearing.

(a) *Conduct of proceeding.* The adjudicative provisions of the Administrative Procedure Act, formal rules of evidence and subpart A of this part do not apply to hearings conducted under this subpart, except as provided in § 19.100(b).

(b) *Notice of hearing.* Following the comment period, the Comptroller shall send a notice which fixes a date, time and place for hearing to each applicant and to any person who has requested an opportunity to be heard.

(c) *Presiding officer.* The Comptroller shall designate a presiding officer to conduct the hearing. The presiding officer shall determine all procedural questions not governed by this subpart and may limit the number of witnesses and impose time and presentation limitations as are deemed reasonable. At the conclusion of the informal hearing, the presiding officer shall issue a recommended decision to the Comptroller as to whether the exemption should issue. The decision shall include a summary of the facts and arguments of the parties.

(d) *Attendance.* The applicant and any person who has requested an opportunity to be heard may attend the hearing, with or without counsel. The hearing shall be open to the public. In addition, the applicant and any other hearing participant may introduce oral testimony through such witnesses as the presiding officer shall permit.

(e) *Order of presentation.* (1) The applicant may present an opening statement of a length decided by the presiding officer. Then each of the hearing participants, or one among them selected with the approval of the presiding officer, may present an opening statement. The opening statement should summarize concisely what the applicant and each participant intends to show.

(2) The applicant shall have an opportunity to make an oral presentation of facts and materials or submit written materials for the record. One or more of the hearing participants may make an oral presentation or a written submission.

(3) After the above presentations, the applicant, followed by one or more of the hearing participants, may make concise summary statements reviewing their position.

(f) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties afforded the hearing. All witnesses shall be present on their own volition, but any person appearing as a witness may be questioned by each applicant, any hearing participant, and the presiding officer. Witnesses shall be sworn unless otherwise directed by the presiding officer.

(g) *Evidence.* The presiding officer may exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence do not apply. Documentary material must be of a size consistent with ease of handling and filing. The presiding officer may determine the number of copies that must be furnished for purposes of the hearing.

(h) *Transcript.* A transcript of each proceeding will be arranged by the OCC, with all expenses, including the furnishing of a copy to the presiding officer, being borne by the applicant.

§ 19.124 Decision of the Comptroller.

Following the conclusion of the hearing and the submission of the record and the presiding officer's recommended decision to the Comptroller for decision, the Comptroller shall notify the applicant and all persons who have so requested in writing of the final disposition of the application. Exemptions granted must be in the form of an order which specifies the type of exemption granted and its terms and conditions.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

§ 19.130 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C) of the Exchange Act (15 U.S.C. 78o–4(c)(5), 78o–5(c)(2)(A), 78q–1(c)(3)(A), and 78q–1(c)(4)(C)), to take disciplinary action against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) In addition to the issuance of disciplinary orders after opportunity for hearing, the Comptroller or the Comptroller's delegate may issue and serve any notices and temporary or permanent cease-and-desist orders and take any actions that are authorized by section 8 of the FDIA (12 U.S.C. 1818), sections 15B(c)(5), 15C(c)(2)(B), and 17A(d)(2) of the Exchange Act, and other subparts of this part against the following:

(1) The parties listed in paragraph (a) of this section; and

(2) A bank which is a clearing agency.

(c) Nothing in this subpart impairs the powers conferred on the Comptroller by other provisions of law.

§ 19.131 Notice of charges and answer.

(a) Proceedings are commenced when the Comptroller serves a notice of charges on a bank or associated person. The notice must indicate the type of disciplinary action being contemplated and the grounds therefor, and fix a date, time and place for hearing. The hearing must be set for a date at least 30 days after service of the notice. A party served with a notice of charges may file an answer as prescribed in § 19.19. Any party who fails to appear at a hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of a disciplinary order.

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), a request for a private hearing may be filed within 20 days of service of the notice.

§ 19.132 Disciplinary orders.

(a) In the event of consent, or if on the record filed by the administrative law judge, the Comptroller finds that any act or omission or violation specified in the notice of charges has been established, the Comptroller may serve on the bank or persons concerned a disciplinary order, as provided in the Exchange Act. The order may:

(1) Censure, limit the activities, functions or operations, or suspend or revoke the registration of a bank which is a municipal securities dealer;

(2) Censure, suspend or bar any person associated or seeking to become associated with a municipal securities dealer;

(3) Censure, limit the activities, functions or operations, or suspend or bar a bank which is a government securities broker or dealer;

(4) Censure, limit the activities, functions or operations, or suspend or bar any person associated with a government securities broker or dealer;

(5) Deny registration to, limit the activities, functions, or operations or suspend or revoke the registration of a bank which is a transfer agent; or

(6) Censure or limit the activities or functions, or suspend or bar, any person

associated or seeking to become associated with a transfer agent.

(b) A disciplinary order is effective when served on the party or parties involved and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

§ 19.140 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in section 21B of the Exchange Act (15 U.S.C. 78u–2), in proceedings commenced pursuant to sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o–4, 78o–5, or 78q–1) for which the OCC is the appropriate regulatory agency under section 3(a)(34) of the Exchange Act (15 U.S.C. 78c(a)(34)), the Comptroller may impose a civil money penalty against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) All proceedings under this subpart must be commenced, and the notice of assessment must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), any request for a private hearing must be filed within 20 days of service of the notice.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

§ 19.150 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 12(i) and 21C of the Exchange Act (15 U.S.C. 78*l*(i) and 78u–3), the Comptroller may initiate cease-and-desist proceedings against a national bank for violations of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act or regulations or rules issued thereunder (15 U.S.C. 78*l*, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p).

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), any request for a private hearing must be filed within 20 days of service of the notice.

Subpart H—Change in Bank Control

§ 19.160 Scope.

(a) Section 7(j) of the FDIA (12 U.S.C. 1817(j)) provides that no person may acquire control of an insured depository institution unless the appropriate Federal bank regulatory agency has been given prior written notice of the proposed acquisition. If, after investigating and soliciting comment on the proposed acquisition, the agency decides that the acquisition should be disapproved, the agency shall notify the acquiring party in writing within three days of the decision. The party can then request an agency hearing on the proposed acquisition. The OCC's procedures for reviewing notices of proposed acquisitions in change-in-control proceedings are set forth in § 5.50 of this chapter.

(b) Unless otherwise provided in this subpart, the rules in subpart A of this part set forth the procedures applicable to requests for OCC hearings.

§ 19.161 Hearing request and answer.

(a) *Hearing request.* The OCC's written disapproval of a proposed acquisition of control of a national bank, must:

(1) Contain a statement of the basis for the disapproval; and

(2) Indicate that—

(i) A hearing may be requested by filing a written request with the Comptroller within ten days after service of the notice of disapproval; and

(ii) If a hearing is requested, that an answer to the notice of disapproval must be filed within 20 days after service of the notice of disapproval.

(b) *Answer.* An answer to the notice of disapproval must specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice which are not specifically denied are deemed admitted by the applicant. Any hearing under this subpart shall be limited to those portions of the notice that are specifically denied.

(c) *Default—(1) Effect of failure to answer.* Failure of an applicant to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Comptroller based upon an applicant's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of disapproval constitutes a final and unappealable order.

§ 19.162 Hearing order.

Upon receipt of a request for hearing and an answer pursuant to § 19.161, the Comptroller or the Comptroller's designee shall issue an order setting forth the legal authority for the OCC's jurisdiction over the proceeding and shall address the request for hearing.

Subpart I—Discovery Depositions and Subpoenas

§ 19.170 Discovery depositions.

(a) *General rule.* In any proceeding instituted under or subject to the provisions of subpart A of this part, a party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding, and where there is need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition, and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness shall be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the

objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, irrelevant, or immaterial matters;

(3) Involves unwarranted attempts to pry into a party's preparation for trial; or

(4) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

§ 19.171 Deposition subpoenas.

(a) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a discovery deposition under paragraph (a) of this section. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(b) *Service.* The party requesting the subpoena shall serve it on the person named therein, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(c) *Motion to quash.* A person named in a subpoena may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party which requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(d) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 19.27(d).

Subpart J—Formal Investigations

§ 19.180 Scope.

This subpart and § 19.8 apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate and pertain to the exercise of powers specified in 12 U.S.C. 481, 1818(n) and 1820(c), and section 21 of the Exchange Act (15 U.S.C. 78u). This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of banks and their affiliates.

§ 19.181 Confidentiality of formal investigations.

Information or documents obtained in the course of a formal investigation are confidential and may be disclosed only in accordance with the provisions of part 4 of this chapter.

§ 19.182 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller or the Comptroller's delegate. The order must designate the person or persons who will conduct the investigation. Such persons are authorized, among other things, to issue subpoenas duces tecum, to administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings.

§ 19.183 Rights of witnesses.

(a) Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall, on request, be shown the order initiating the investigation.

(b) Any person who, in a formal investigation, is compelled to appear and testify, or who appears and testifies by request or permission of the Comptroller, may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel means the right of a person testifying to have an attorney present at all times while testifying and to have the attorney—

(1) Advise the person before, during and after the conclusion of testimony;

(2) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of the person.

(c) Any person who has given or will give testimony and counsel representing the person may be excluded from the proceedings during the taking of testimony of any other witness.

(d) Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation.

(e) Any designated representative conducting an investigative proceeding shall report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

§ 19.184 Service of subpoena and payment of witness fees.

A subpoena may be served on the person named therein, or such person's attorney, by personal service or certified mail. A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Subpart K—Parties and Representational Practice Before OCC; Standards of Conduct

§ 19.290 Scope.

This subpart contains rules relating to parties and representational practice before the OCC. This subpart includes the imposition of sanctions by the administrative law judge, any other presiding officer appointed pursuant to subparts C and D of this part, or the Comptroller against parties or their counsel in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or debarment—against individuals who appear before the OCC in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with presentations to the OCC relating

to a client's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the OCC are not subject to disciplinary proceedings under this subpart.

§ 19.191 Definitions.

As used in §§ 19.190 through 19.201, the following terms shall have the meaning given in this section unless the context otherwise requires:

(a) *Practice before the OCC* includes any matters connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the OCC. Such matters include, but are not limited to, representation of a client in an adjudicatory proceeding under this part; the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the OCC, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the OCC on behalf of another person. The term "practice before the OCC" does not include work prepared for a bank solely at its request for use in the ordinary course of its business.

(b) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, of the United States or the District of Columbia.

(c) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth of the United States, or the District of Columbia.

§ 19.192 Sanctions relating to conduct in an adjudicatory proceeding.

(a) *General rule.* Appropriate sanctions may be imposed when any party or person representing a party in an adjudicatory proceeding under this part has failed to comply with an applicable statute, regulation, or order, and that failure to comply:

(1) Constitutes contemptuous conduct;

(2) Materially injures or prejudices another party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Unduly delays the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) Upon the motion of any party, or on his or her own motion, the administrative law judge or other presiding officer may impose sanctions in accordance with this section. The administrative law judge or other presiding officer shall submit to the Comptroller for final ruling any sanction entering a final order that determines the case on the merits.

(2) No sanction authorized by this section, other than refusal to accept late filings, shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form as the administrative law judge or other presiding officer directs. The administrative law judge or other presiding officer may limit the opportunity to be heard to an opportunity of a party or a party's representative to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge or other presiding officer.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, are subject to interlocutory review pursuant to § 19.25 in the same manner as any other ruling.

(d) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or other presiding officer or the Comptroller from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 19.193 Censure, suspension or debarment.

The Comptroller may censure an individual or suspend or debar such individual from practice before the OCC if he or she is incompetent in representing a client's rights or interest in a significant matter before the OCC; or engages, or has engaged, in disreputable conduct; or refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual may be initiated only upon a finding by the Comptroller that the basis for the disciplinary action is sufficiently egregious.

§ 19.194 Eligibility of attorneys and accountants to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the OCC.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the OCC may practice before the OCC.

§ 19.195 Incompetence.

Incompetence in the representation of a client's rights and interests in a significant matter before the OCC is grounds for suspension or debarment. The term "incompetence" encompasses conduct that reflects a lack of the knowledge, judgment and skill that a professional would ordinarily and reasonably be expected to exercise in adequately representing the rights and interests of a client. Such conduct includes, but is not limited to:

(a) Handling a matter which the individual knows or should know that he or she is not competent to handle, without associating with a professional who is competent to handle such matter.

(b) Handling a matter without adequate preparation under the circumstances.

(c) Neglect in a matter entrusted to him or her.

§ 19.196 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred or suspended from practice before the OCC includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust.

(b) Knowingly giving false or misleading information, or participating

in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement.

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the OCC by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, or commonwealth of the United States, or the District of Columbia for the conviction of a felony or misdemeanor involving moral turpitude in matters relating to the supervisory responsibilities of the OCC, where the conviction has not been reversed on appeal.

(e) Knowingly aiding or abetting another individual to practice before the OCC during that individual's period of suspension, debarment, or ineligibility.

(f) Contemptuous conduct in connection with practice before the OCC, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter.

(g) Suspension or debarment from practice before the Board of Governors, the FDIC, the OTS, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal agency based on matters relating to the supervisory responsibilities of the OCC.

(h) Willful violation of any of the regulations contained in this part.

§ 19.197 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the OCC, who has reason to believe that an individual practicing before the OCC in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 19.192, may make a report thereof and forward it to the OCC or to such person as may be delegated responsibility for such matters by the Comptroller.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the OCC, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Comptroller has reason to believe that any individual who practices before the OCC in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 19.192, the Comptroller may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding will be conducted pursuant to § 19.99 and initiated by a complaint which names the individual as a respondent and is signed by the Comptroller or the Comptroller's delegate. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section may not be commenced until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the commencement of the proceeding.

§ 19.198 Conferences.

(a) *General.* The Comptroller may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the OCC may consent to suspension from practice. At the discretion of the Comptroller, the individual may be suspended or debarred in accordance with the consent offered.

§ 19.199 Proceedings under this subpart.

Any hearing held under this subpart is held before an administrative law judge pursuant to procedures set forth in subpart A of this part. The Comptroller or the Comptroller's delegate shall appoint a person to represent the OCC in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding is disqualified from representing the OCC in the hearing. The hearing will be closed to the public unless the Comptroller on his or her own initiative, or on the request of a party, otherwise directs. The administrative law judge shall issue a recommended decision to the Comptroller who shall issue the final decision and order. The Comptroller may censure, debar or suspend an individual, or take such other disciplinary action as the Comptroller deems appropriate.

§ 19.200 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual may not practice before the OCC unless otherwise permitted to do so by the Comptroller.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual may not practice before the OCC during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the OCC, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the OCC's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Comptroller shall give notice of the order to appropriate officers and employees of the OCC and to interested departments and agencies of the Federal government. The Comptroller or the Comptroller's delegate shall also give notice to the appropriate authorities of the state in which any debarred or suspended individual is or was licensed to practice.

§ 19.201 Petition or reinstatement.

At the expiration of the period of time designated in the order of debarment, the Comptroller may entertain a petition for reinstatement from any person debarred from practice before the OCC. The Comptroller may grant reinstatement only if satisfied that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any

request for reinstatement shall be limited to written submissions unless the Comptroller, in his or her discretion, affords the petitioner a hearing.

Subpart L—Equal Access to Justice Act

§ 19.210 Scope.

The Equal Access to Justice Act regulations applicable to formal OCC adjudicatory proceedings under this part are set forth at 31 CFR part 6.

Dated: August 5, 1991.

Robert L. Clarke,

Comptroller of the Currency.

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August 9, 1991

Part VII

Federal Reserve System

12 CFR Parts 225, 262, and 263

Uniform Rules of Practice and Procedures; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 225, 262, and 263

[Docket No. R-0733]

RIN 7100-AB23

Uniform Rules of Practice and Procedures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requires that the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS"), and the National Credit Union Administration (the "NCUA") (collectively, the "Agencies") develop a set of uniform rules of practice and procedures for administrative hearings ("Uniform Rules"). Section 916 further requires that the Agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

In compliance with the mandate of section 916, this final rule makes uniform those rules concerning the types of formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the Board and each of the other Agencies are adopting complementary "Local Rules" to supplement the Uniform Rules in order to address some or all of the following: formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within the Board and the other Agencies. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas B. Jordan, Senior Attorney, Legal Division, (202/452-3787) or Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation, (202/452-3528).

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of FIRREA, Public Law No. 101-73, 103 Stat. 183 (1989), requires that the FDIC, OCC, the Board, OTS, and NCUA develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

To comply with the requirements of section 916, the Board and the other Agencies issued for public notice and comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rules contained one set of Uniform Rules applicable to all of the Agencies and separate Local Rules specific to each Agency.

The Agencies have received comments on the Joint Proposed Rule, and the Board has also received comments on its proposed Local Rules. The Board is now issuing final Uniform and Local Rules incorporating changes, discussed below, that respond to the comments received. The Board's final Uniform Rules also replace generic references in the Proposed Uniform Rules with references specific to the Board, as discussed below.

B. Subpart-by-Subpart Summary and Discussion of Uniform and Local Rules

Subpart A—Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, including rules for initiating enforcement proceedings, filing and service of papers, motions, discovery, prehearing conferences, public hearings, hearing subpoenas, conflicts of interest, ex parte communications, rules of evidence, and post-hearing procedures.

Subpart B—Board Local Rules Supplementing the Uniform Rules

This subpart addresses subjects contained in the Board's previous Subpart A, "Rules of Practice for Formal Hearings", that are not addressed in the Uniform Rules, such as terms specific to the Board, the Board's procedures for discovery depositions, and provisions for certain proceedings where the Board orders that a formal hearing be held.

Subpart C—Procedures for Assessment of Civil Money Penalties

This subpart supplements the Uniform Rules as they apply to civil money penalty proceedings. The subpart contains Board rules for such proceedings corresponding to rules contained in previous subpart B, such as the opportunity for an informal proceeding, and rules for the assessment and payment of such penalties.

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

This subpart applies to informal hearings afforded an institution-affiliated party who has been suspended or removed from office or prohibited from further participation in an institution's affairs by the Board. The only significant change in the text of this subpart from the text of former subpart C is the substitution pursuant to FIRREA of the terms "institution" and "institution-affiliated party" for the terms "state member bank" and "bank official" in the former subpart C.

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

This subpart addresses procedures under which the Board may take action to require a bank or bank holding company to achieve and maintain adequate capital. The text of this subpart corresponds to the text of former subpart D, which is incorporated into this subpart with minor changes.

Subpart F—Practice Before the Board

Subpart F, Practice Before the Board, is a new subpart containing provisions for the discipline of practitioners before the Board through sanctions that extend beyond a specific proceeding. This subpart therefore supplements the sanctions contained in the Uniform Rules that relate only to the proceeding at hand. These disciplinary practice sanctions are new to the Board, but resemble rules that have been adopted by other federal agencies.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

Subpart G is a new subpart implementing the provisions of the

Equal Access to Justice Act, which provides that certain private parties that prevail against an agency in an adversary adjudication may recover their costs and attorneys fees if the agency was not substantially justified in its position. The subpart addresses eligibility standards for an award, the required contents of an application for an award, standards for the reasonableness of claimed fees, and procedures for adjudicating an application for an award.

C. Comments and Discussion

In response to the June 17, 1991, Joint Notice of Proposed Rulemaking, the Board and the other Agencies received three comment letters. The Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules and separately considered the comments directed to specific Local Rules. The suggestions and criticisms conveyed in these comments, and the responses of the Board and the other Agencies, are discussed below.

Uniform Rules

(1) One commenter criticized the proposed Rules for failing in proposed § 263.19 to accommodate default situations where good cause could be shown for the failure to file an answer. This comment reflects a misunderstanding of the proposed Rules, which address such situations by allowing an administrative law judge to extend time limits for good cause shown (§ 263.13), and by requiring that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 263.19), thereby permitting respondents an opportunity to oppose such a motion. To alleviate confusion, the wording of the final default rule has been modified to make this process more explicit.

(2) Another issue raised by a commenter concerns the apparent difference among the Agencies in rules for such procedures as formal investigations, Equal Access to Justice Act proceedings, and sanctions. The lack of uniformity in these areas is based on the scope of section 916 and differences in the statutory authority and structure among the Agencies.

As noted above, section 916 was designed to improve and expedite formal administrative proceedings conducted by the Agencies pursuant to the Administrative Procedure Act ("APA"), especially where the Agencies' enforcement authority derived from a common statute. *See* H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 442 (1989); 1 FR 305.87-12. Accordingly, the statutory mandate did not extend to non-APA proceedings, which tend to reflect differences in authority and operations among the Agencies. For example, the Uniform Rules do not contain provisions for formal investigations, which are not APA proceedings, and which are conducted pursuant to statutory authority which varies among the agencies. Differences in Agency structure also contribute to differing policies concerning the frequency, length, and procedures for formal investigations. Agency structure is also a reason why the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Both the OCC and the OTS are bureaus of the Department of the Treasury and, as such, are subject to Treasury's Equal Access to Justice Act regulations, unlike the other Agencies. *See* 31 CFR part 6.

(3) An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. *See, Sims* v. *National Transportation Safety Board*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *N.L.R.B.*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodities Futures Trading Comm.*, 549 F.2d 28, 33 (7th Cir. 1977). Further, the APA contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3rd Cir. 1974), *cert. denied*, 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance accommodating the due process interests of respondents in obtaining prehearing discovery, the public interest in swift adjudications, and the Agencies' need to use limited resources efficiently. This process included consideration of the various interests of the entities regulated by each Agency as well as each Agency's institutional interests. The contrasting considerations are reflected in the types, complexity and number of enforcement actions brought by each Agency, the methods of litigation and opportunity for settlement in such actions, the structure and available resources of each Agency, and the supervisory procedures developed internally by each Agency. This process resulted in divergent conclusions among the Agencies as to the use of discovery depositions.

Thus, the experiences of the OCC, the OTS, and the Board resulted in a finding that discovery depositions could serve a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing numbers of complex enforcement actions, typically involving multiple counts, multiple parties, and different types of enforcement actions combined into one case, it was found that discovery depositions could be useful to both respondents and the regulator in resolving cases expeditiously. To avoid undue burden and delay, however, discovery depositions for the OCC, the OTS, and the Board are limited to witnesses that have factual, direct and personal knowledge of the matters at issue and expert witnesses. The FDIC and the NCUA determined that the interests of respondents in further prehearing disclosure in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document-intensive nature of their proceedings.

(4) One commenter suggested that the definition of "Decisional employee" in proposed rule 263.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicts of interest.

This suggested amendment is not adopted because the definition in § 263.3(c) incorporates the formulation of the APA. The APA forbids an employee from acting in a decisional capacity where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d) Accordingly, Congress has already drawn the line defining conflicts of interest in this context, and the Agencies find no basis for altering that determination.

(5) A recommendation was made that § 263.18(b) should be modified to require that an Agency set forth in a notice not

only those facts showing that the Agency is entitled to relief of some kind but also those facts required for the particular relief requested.

The Agencies disagree, finding that § 263.18(b) meets the standards for notice pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that these requirements are sufficiently particular to provide notice for pleading in administrative proceedings. *See First National Monetary Corporation* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corporation* v. *Federal Trade Commission*, 498 F. Supp. 772, 780 (D.Del. 1980).

(6) One commenter suggested that the proposed Rule regarding severance of proceedings is unduly stringent in light of the severity of sanctions at stake in some of the proceedings governed by the Rules. The commenter argued that any inconsistency or conflict in the positions of respondents warrants severance without the necessity of weighing any countervailing interests. The commenter further argued that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

This suggestion is not adopted. A similar weighing test for severance is applied by federal courts in criminal cases, see, *e.g.*, *United States* v. *Walton*, 552 F.2d 1354, 1362 (10th Cir.), *cert. denied*, 431 U.S. 959 (1977), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the Agencies' overall caseload burden at any particular time.

(7) Uniform Rule 263.24(c) provides that privileged documents are not discoverable. One commenter objected to the right of Enforcement Counsel to assert the deliberative process privilege on the ground that, in some cases, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggested, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that Uniform Rule 263.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege are available to respondents without modifying Uniform Rule 263.24. Uniform Rule 263.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that grounds exist to challenge Enforcement Counsel's assertion of the deliberative process privilege, the respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. In such a case, an administrative law judge would need no further specific authority by rule to inquire as to the basis of the assertion of privilege or to conduct an inspection of the assertedly privileged material *in camera*, and to then rule whether the privilege can be sustained.

(8) One commenter suggested that the determination to seal a document pursuant to § 263.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was also suggested that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate a respondent's concern about personal information by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest. Thus, the Agencies disagree with the commenter that this determination should be subject to review by an administrative law judge.

(9) One commenter suggested the deletion of § 263.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree with the commenter. The first sentence of § 263.36(c)(2) cross-references § 263.36(a), which makes agency-prepared documents subject to the same evidentiary standards as those applicable to documents not prepared by the agency. Moreover, the same types of agency prepared-documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies feel that requiring a sponsoring witness for such documents needlessly lengthens proceedings, consumes judicial resources, and impedes the hearing process.

(10) One commenter stated that, under § 263.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to the administrative law judge's recommended decision and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 263.39(b)(2) is amended to read that "No exception *need* be considered * * * " (emphasis added).

The Agencies do not agree with the commenter that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

(11) Another suggestion by a commenter recommended wider publication of enforcement orders and actions. This is an area recently addressed by Congress in amendments to 12 U.S.C. 1818(u), which required the Agencies to publish all final orders and other documents subject to enforcement action. *See* the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990", Title XXV of the Crime Control Act of 1990, Public Law No. 101-647, 104 Stat. 4789. Each of the Agencies has implemented procedures to give effect to this statutory directive and enforcement decisions may be found by consulting the public information office, reading room, or library of each Agency. In addition, each Agency frequently issues press releases concerning recent cases and decisions.

Board Local Rules

(1) One commenter criticized the language of proposed § 263.85(b)(4), a republication of an existing Board rule, suggesting that it represented an attempt by the Board to make informal enforcement actions, such as memoranda of understanding, legally enforceable through the capital directive process. The commenter misunderstood the import of this provision, which provides that the Board may enforce capital directives or capital plans designed to achieve the levels of capital required in the directive where the level is higher than the applicable regulatory minimum. The Board's regulations provide in § 263.84 that the higher capital levels contained in a memorandum of understanding may not be enforced unless the Board first issues a capital directive that sets forth such a level. The commenter's assertion that the Board is attempting to subvert the requirements of 12 U.S.C. 1818(b) is therefore incorrect.

(2) One commenter criticized the Board's local rules for discovery deposition procedure because they require the administrative law judge to authorize a deposition by issuing a subpoena, rather than permitting depositions to be freely noticed by the parties.

The Board has retained its existing procedure for depositions by requiring that discovery depositions be taken only pursuant to a subpoena issued by the administrative law judge. This process reflects the Board's belief that the nature of the formal administrative proceedings conducted by the Board does not require wide-ranging discovery and that depositions will rarely be allowed of persons other than identified hearing witnesses. The subpoena process permits the administrative law judge to make the determination at the outset whether the testimony sought is properly within the scope allowed by the Board's discovery rules, *i.e.*, that of a fact or expert witness with relevant information. It has been the Board's experience that respondents occasionally allege that presentation of their case requires depositions of persons without factual information who participated in the Board's deliberative process, such as members of the Board or other Board officials with supervisory responsibility. This practice, which represents attempts to inquire into privileged communications, also serves to burden Board officials unconnected with the prosecution of the case. Accordingly, the Board's procedure permits the administrative law judge to make the initial determination as to relevance and burden of the proposed deposition before the deposition is scheduled.

D. Technical Modifications to the Uniform Rules

In conjunction with the other Agencies, the Board is amending the Uniform Rules proposed in the Joint Notice of Proposed Rulemaking to replace generic definitional terms with terms specifically applicable to the Board and its operations. Thus, the Board is replacing the terms "Agency Head" and "Agency" with "Board" or "Board of Governors", and is restricting the "scope" provisions of § 263.01 to those statutes subject to Board jurisdiction. Further conforming changes have been made to the definitions of "Local Rules", "Uniform Rules", and "OFIA". The other Agencies have made similar changes. The purpose of these changes is to make the Board's Uniform Rules easier to understand and to use. These changes do not affect the substance of the Uniform Rules.

E. Immediate Effective Date

The Board is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of certain regulations not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). *See Central Lincoln Peoples' Utility Dist.* v. *Johnson*, 735 F.2d 1101 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. *See Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 888 (3rd Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the Agencies to (1) establish their own pool of administrative law judges and (2) to develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act [August 9, 1989]." The immediate effectiveness of these Uniform Rules is concurrent with the beginning of OFIA operations, thereby providing a clear demarcation between the new system and the old. If the effective date of the Rules were delayed, OFIA would be forced to begin its operations under the diverse existing regulations before switching to the new Uniform Rules. The result would be uncertainty, confusion, and a lack of uniformity in adjudication directly contrary to the purpose of section 916. Furthermore, there is no apparent necessity for delay in the effective date of the regulations. Accordingly, because delay in the effective date of the regulations would be impracticable, unnecessary, and contrary to the public interest, the Board finds that good cause exists to make the Uniform Rules effective upon publication in the Federal Register.

F. Applicability of Revised Rules to Enforcement Proceedings

Part 263, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of part 263 applies to any proceeding commenced prior to August 9, 1991 unless, with the consent of the administrative law judge or the Board, the parties agree to have the proceeding governed by revised part 263.

G. Regulatory Flexibility Act Statement

The Board certifies pursuant to section 605(b) of the Regulatory Flexibility Act, that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA, which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Board already has in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies,

Reporting and recordkeeping requirements.

12 CFR Part 262

Administrative practice and procedure, Federal Reserve System.

12 CFR Part 263

Administrative practice and procedure, Banks, banking, Equal access to justice, Federal Reserve System, Hearing and appeal procedures, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 225, 262, and 263 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831 i, 1843(c)(8), 1844(b), 1972(i), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

§ 225.6 [Amended]

2. 12 CFR 225.6(a) is amended by removing the two references to "subpart B" from the second sentence of that paragraph, and inserting in their place "subpart C".

PART 262—RULES OF PROCEDURE

3. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552

§ 262.3 [Amended]

4. 12 CFR 262.3(i)(2) is amended by removing the last sentence of that paragraph and by adding the sentence "Any such formal hearing is conducted by an administrative law judge in accordance with subparts A and B of the Board's Rules of Practice For Hearings, (part 262 of this chapter)." as the new last sentence of that paragraph.

5. Part 263 is revised to read as follows

PART 263—RULES OF PRACTICE FOR HEARINGS

Subpart A—Uniform Rules of Practice and Procedure

Sec.

Subpart B—Board Local Rules Supplementing the Uniform Rules

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

Subpart F—Practice Before the Board

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3108, 3907, 3909; 15 U.S.C. 21, 78, o-4, 78o-5, and 78u-2.

Subpart A—Uniform Rules of Practice and Procedure

§ 263.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Board of Governors of the Federal Reserve System ("Board") should issue an order to approve or disapprove a person's proposed acquisition of a state member bank or bank holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o-5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the Board is the appropriate agency;

(e) Assessment of civil money penalties by the Board against institutions, institution-affiliated parties, and certain other persons for which the Board is the appropriate agency for any violation of:

(1) Any provision of the Bank Holding Company Act of 1956, as amended ("BHC Act"), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 1847(b) and (d);

(2) Sections 19, 22, 23A and 23B of the Federal Reserve Act ("FRA"), or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(3) Section 9 of the FRA pursuant to 12 U.S.C. 324;

(4) Section 106(b) of the Bank Holding Company Act Amendments of 1970 and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(5) Any provision of the Change in Bank Control Act of 1978, as amended, or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(6) Any provision of the International Lending Supervision Act of 1983 ("ILSA") or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(7) Any provision of the International Banking Act of 1978 ("IBA") or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(8) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(9) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(10) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the Board, the terms of any condition imposed in writing by the Board in connection with the grant of an application or request, and certain unsafe or unsound practices or breaches of fiduciary duty or law or regulation pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided in subparts B through G of this part.

§ 263.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 263.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the Board's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Board in an adjudicatory proceeding.

(e) *Final order* means an order issued by the Board with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(f) *Institution* includes: (1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHC Act (12 U.S.C. 1841 *et seq.*);

(3) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(4) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(5) Any Federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(g) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(h) *Local Rules* means those rules promulgated by the Board in this part other than subpart A.

(i) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the Board, the Office of Comptroller of the Currency (the "OCC"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS"), and the National Credit Union Administration (the "NCUA").

(j) *Party* means the Board and any person named as a party in any notice.

(k) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (f) of this section.

(l) *Respondent* means any party other than the Board.

(m) *Uniform Rules* means those rules in subpart A of this part that are common to the Board, the OCC, the FDIC, the OTS and the NCUA.

(n) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 263.4 Authority of the Board.

The Board may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 263.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § 263.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Board shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Board a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 263.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the Board or an administrative law judge.*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the Board if such attorney is not currently suspended or debarred from practice before the Board.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the Board.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Board, shall file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 263.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statement is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 263.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 263.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 263.9 Ex parte communications.

(a) *Definition.*—(1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, a member of the Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Board until the date that the Board issues its final decision pursuant to § 263.40(c), no party, interested person or counsel therefor shall knowingly make or cause

to be made an ex parte communication concerning the merits of the proceeding to a member of the Board, the administrative law judge, or a decisional employee. No member of the Board, administrative law judge, or decisional employee shall knowingly make or cause to be made to a party, or any interested person or counsel therefor, any ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, a member of the Board or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 263.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 263.25 and 263.26, shall be filed with OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Board or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Board or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8 1/2 x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 263.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Board and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Board, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 263.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 263.10(c).

(c) *By the Board or the administrative law judge.* (1) All papers required to be served by the Board or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 263.6 , shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 263.6, the Board or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 263.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same-day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Board or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Board or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 263.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Board pursuant to § 263.38, the Board may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party after notice and opportunity to respond is afforded all non-moving parties or *sua sponte* by the Board or the administrative law judge.

§ 263.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Board is the party requesting the subpoena. The Board shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the Board.

§ 263.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any Board representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 263.16 The Board's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the Board or any Federal Reserve Bank to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Agency to conduct or continue any form of investigation authorized by law.

§ 263.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 263.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), a proceeding governed by this subpart is commenced by issuance of a notice by the Board.

(ii) The notice must be served by the Board upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with OFIA.

(2) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Board.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the Board's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the Board is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 263.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 263.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Board or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 263.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Board a recommended decision containing the findings and the relief sought in the notice.

§ 263.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule shall be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 263.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must be filed with the Board.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Board, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 263.29 and 263.30.

§ 263.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by § 263.53 of subpart B of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 263.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by

category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the Board's rules at 12 CFR 261.10, appendix A implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 263.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 263.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 263.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 263.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 263.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 263.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 263.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness's testimony for the record may apply in accordance with the procedures set

forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon a showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness's unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 263.28 Interlocutory review.

(a) *General rule.* The Board may review a ruling of the administrative law judge prior to the certification of the record to the Board only in accordance with the procedures set forth in this section and § 263.23.

(b) *Scope of review.* The Board may exercise interlocutory review of a ruling of the administrative law judge if the Board finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 263.23. Any party may file a response to a request for interlocutory review in accordance with § 263.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Board for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Board.

§ 263.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Board issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no

genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Board. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 263.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 263.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 263.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) Effect of failure to comply. No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 263.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Board a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 263.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 263.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the

administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 263.26(c).

§ 263.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 263.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or Board shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institution regulatory agency or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Board.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 263.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 263.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 263.37(b), the administrative law judge shall file with and certify to the Board for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 263.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 263.38, a party may file with the Board written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 263.40 Review by the Board.

(a) *Notice of submission to the Board.* When the Board determines that the record in the proceeding is complete, the Board shall serve notice upon the parties that the proceeding has been submitted to the Board for final decision.

(b) *Oral argument before the Board.* Upon the initiative of the Board or on the written request of any party filed with the Board within the time for filing exceptions, the Board may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board's final decision. Oral argument before the Board must be on the record.

(c) *Agency final decision.* (1) Decisional employees may advise and assist the Board in the consideration and disposition of the case. The final decision of the Board will be based upon review of the entire record of the proceeding, except that the Board may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Board shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Board orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Board shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Board or required by statute, upon any appropriate state or Federal supervisory authority.

§ 263.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Board may not, unless specifically ordered by the Board or a reviewing court, operate as a stay of any order issued by the Board. The Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—Board Local Rules Supplementing the Uniform Rules

§ 263.50 Purpose and scope.

(a) This subpart prescribes the rules of practice and procedure governing formal adjudications set forth in § 263.50(b) of this subpart, and supplements the rules of practice and procedure contained in subpart A of this part.

(b) The rules and procedures of this subpart and subpart A of this part shall apply to the formal adjudications set forth in § 263.1 of subpart A and to the following adjudications:

(1) Suspension of a member bank from use of credit facilities of the Federal Reserve System under section 4 of the FRA (12 U.S.C. 301);

(2) Termination of a bank's membership in the Federal Reserve System under section 9 of the FRA (12 U.S.C. 327);

(3) Issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21);

(4) Adjudications under sections 2, 3, or 4 of the BHC Act (12 U.S.C. 1841, 1842, or 1843);

(5) Formal adjudications on bank merger applications under section 18(c) of the FDIA (12 U.S.C. 1828(c));

(6) Issuance of a divestiture order under section 5(e) of the BHC Act (12 U.S.C. 1844(e));

(7) Imposition of sanctions upon any municipal securities dealer for which the Board is the appropriate regulatory agency, or upon any person associated or seeking to become associated with such a municipal securities dealer, under section 15B(c)(5) of the Exchange Act (15 U.S.C. 78o-4); and

(8) Proceedings where the Board otherwise orders that a formal hearing be held.

§ 263.51 Definitions.

As used in subparts B through G of this part:

(a) *Secretary* means the Secretary of the Board of Governors of the Federal Reserve System;

(b) *Member bank* means any bank that is a member of the Federal Reserve System.

§ 263.52 Address for filing.

All papers to be filed with the Board shall be filed with the Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551.

§ 263.53 Discovery depositions.

(a) *In general.* In addition to the discovery permitted in subpart A of this part, limited discovery by means of depositions shall be allowed for individuals with knowledge of facts material to the proceeding that are not protected from discovery by any applicable privilege, and of identified expert witnesses. Except in unusual cases, accordingly, depositions will be permitted only of individuals identified as hearing witnesses, including experts. All discovery depositions must be completed within the time set forth in § 263.24(d).

(b) *Application.* A party who desires to take a deposition of any other party's proposed witnesses, shall apply to the administrative law judge for the issuance of a deposition subpoena or subpoena duces tecum. The application shall state the name and address of the proposed deponent, the subject matter of the testimony expected from the deponent and its relevancy to the proceeding, and the address of the place and the time, no sooner than ten days after the service of the subpoena, for the taking of the deposition. Any such application shall be treated as a motion subject to the rules governing motions practice set forth in § 263.23.

(c) *Issuance of subpoena.* The administrative law judge shall issue the requested deposition subpoena or subpoena duces tecum upon a finding that the application satisfies the requirements of this section and of § 263.24. If the administrative law judge determines that the taking of the deposition or its proposed location is, in whole or in part, unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome, he or she may deny the application or may grant it upon such conditions as justice may require. The party obtaining the deposition subpoena or subpoena duces tecum shall be responsible for serving it on the deponent and all parties to the proceeding in accordance with § 263.11.

(d) *Motion to quash or modify.* A person named in a deposition subpoena or subpoena duces tecum may file a motion to quash or modify the subpoena or for the issuance of a protective order. Such motions must be filed within ten days following service of the subpoena, but in all cases at least five days prior to the commencement of the scheduled deposition. The motion must be accompanied by a statement of the reasons for granting the motion and a copy of the motion and the statement must be served on the party which requested the subpoena. Only the party requesting the subpoena may file a response to a motion to quash or modify, and any such response shall be filed within five days following service of the motion.

(e) *Enforcement of a deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures set forth in § 263.27(d).

(f) *Conduct of the deposition.* The deponent shall be duly sworn, and each party shall have the right to examine the deponent with respect to all non-privileged, relevant and material matters. Objections to questions or evidence shall be in the short form, stating the ground for the objection. Failure to object to questions or evidence shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The discovery deposition shall be transcribed or otherwise recorded as agreed among the parties.

(g) *Protective orders.* At any time during the taking of a discovery deposition, on the motion of any party or of the deponent, the administrative law judge may terminate or limit the scope and manner of the deposition upon a finding that grounds exist for such relief. Grounds for terminating or limiting the taking of a discovery deposition include a finding that the discovery deposition is being conducted in bad faith or in such a manner as to:

(1) Unreasonably annoy, embarrass, or oppress the deponent;

(2) Unreasonably probe into privilege, irrelevant or immaterial matters; or

(3) Unreasonably attempt to pry into a party's preparation for trial.

§ 263.54 Delegation to the Office of Financial Institution Adjudication.

Unless otherwise ordered by the Board, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge of OFIA.

§ 263.55 Board as Presiding Officer.

The Board may, in its discretion, designate itself, one or more of its members, or an authorized officer, to act as presiding officer in a formal hearing. In such a proceeding, proposed findings and conclusions, briefs, and other submissions by the parties permitted in subpart A shall be filed with the Secretary for consideration by the Board. Sections 263.38 and 263.39 of subpart A will not apply to proceedings conducted under this section.

§ 263.56 Initial Licensing Proceedings.

Proceedings with respect to applications for initial licenses shall include, but not be limited to, applications for Board approval under section 3 of the BHC Act and such proceedings as may be ordered by the Board with respect to applications under section 18(c) of the FDIA. In such initial licensing proceedings, the procedures set forth in subpart A of this part shall apply, except that the Board may designate a Board Counsel to represent the Board in a nonadversary capacity for the purpose of developing for the record information relevant to the issues to be determined by the Presiding Officer and the Board. In such proceedings, Board Counsel shall be considered to be a decisional employee for purposes of §§ 263.9 and 263.40 of subpart A.

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

§ 263.60 Scope.

The Uniform Rules set forth in subpart A of this part shall govern the procedures for assessment of civil money penalties, except as otherwise provided in this subpart.

§ 263.61 Opportunity for informal proceeding.

In the sole discretion of the Board's General Counsel, the General Counsel may, prior to the issuance by the Board of a notice of assessment of civil

penalty, advise the affected person that the issuance of a notice of assessment of civil penalty is being considered and the reasons and authority for the proposed assessment. The General Counsel may provide the person an opportunity to present written materials or request a conference with members of the Board's staff to show that the penalty should not be assessed or, if assessed, should be reduced in amount.

§ 263.62 Relevant considerations for assessment of civil penalty.

In determining the amount of the penalty to be assessed, the Board shall take into account the appropriateness of the penalty with respect to the financial resources and good faith of the person charged, the gravity of the misconduct, the history of previous misconduct, the economic benefit derived by the person from the misconduct, and such other matters as justice may require.

§ 263.63 Assessment order.

(a) In the event of consent to an assessment by the person concerned, or if, upon the record made at an administrative hearing, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue a final order of assessment of civil penalty. In its final order, the Board may modify the amount of the penalty specified in the notice of assessment.

(b) An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 263.64 Payment of civil penalty.

(a) The date designated in the notice of assessment for payment of the civil penalty will normally be 60 days from the issuance of the notice. If, however, the Board finds in a specific case that the purposes of the authorizing statute would be better served if the 60-day period is changed, the Board may shorten or lengthen the period or make the civil penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of civil penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil penalty should be paid or collected.

(b) Checks in payment of civil penalties should be made payable to the "Board of Governors of the Federal Reserve System." Upon collection, the Board shall forward the amount of the penalty to the Treasury of the United States.

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony Is Charged or Proven

§ 263.70 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any institution-affiliated party for whom the Board is the appropriate regulatory agency, who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the FDIA (12 U.S.C. 1818(g)).

§ 263.71 Notice or order of suspension, removal, or prohibition.

(a) *Grounds.* The Board may suspend an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is charged in any information, indictment, or complaint authorized by a United States attorney with the commission of, or participation in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law. The Board may remove an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is convicted of such an offense and the conviction is not subject to further direct appellate review. The Board may suspend or remove an institution-affiliated party or prohibit an institution-affiliated party from participation in an institution's affairs in these circumstances if the Board finds that continued service to the financial institution or participation in its affairs by the institution-affiliated party may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the financial institution.

(b) *Contents.* The Board commences a suspension, removal, or prohibition action under this subpart with the issuance, and service upon a institution-affiliated party, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the financial institution's affairs. Such a notice or order shall indicate the basis for the suspension, removal, or prohibition and shall inform the institution-affiliated party of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the financial institution does not and is not likely to pose a threat to the interests of the financial institution's depositors or threaten to impair public confidence in the financial institution. Failure to file a timely request for an informal hearing shall be deemed to be a waiver of the right to request such a hearing. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the affiliated financial institution concerned, whereupon the institution-affiliated party shall immediately cease service to the financial institution or further participation in any manner in the conduct of the affairs of the financial institution. A notice or order of suspension, removal, or prohibition may be served by any of the means authorized for service under § 263.11(c)(2) of subpart A.

§ 263.72 Request for informal hearing.

An institution-affiliated party who is suspended or removed from office or prohibited from participation in the institution's affairs may request an informal hearing within 30 days of service of the notice or order. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence in the form of affidavits. If the institution-affiliated party desires to present oral testimony or witnesses at the hearing, the institution-affiliated party must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony.

§ 263.73 Order for informal hearing.

(a) *Issuance of hearing order.* Upon receipt of a timely request for an informal hearing, the Secretary shall promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the

request of the institution-affiliated party, the Secretary may order the hearing to commence at a time more than 30 days after the receipt of the request for hearing. The hearing shall be held in Washington, DC, or at such other place as may be designated by the Secretary, before presiding officers designated by the Secretary to conduct the hearing. The presiding officers normally will include representatives from the Board's Legal Division and the Division of Banking Supervision and Regulation and from the appropriate Federal Reserve Bank.

(b) *Waiver of oral hearing.* A institution-affiliated party may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Board solely on the basis of written submissions.

(c) *Hearing procedures.* (1) The institution-affiliated party may appear at the hearing personally, through counsel, or personally with counsel. The institution-affiliated party shall have the right to introduce relevant written materials and to present an oral argument. The institution-affiliated party may introduce oral testimony and present witnesses only if expressly authorized by the Board or the Secretary. Except as provided in § 263.11, the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and of subpart A of this part shall not apply to the informal hearing ordered under this subpart unless the Board orders that subpart A of this part applies.

(2) The informal hearing shall be recorded and a transcript shall be furnished to the institution-affiliated party upon request and after the payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officers. The presiding officers may ask questions of any witness.

(3) The presiding officers may order the record to be kept open for a reasonable period following the hearing (normally five business days), during which time additional submissions to the record may be made. Thereafter, the record shall be closed.

(d) *Authority of presiding officers.* In the course of or in connection with any proceeding under this subpart, the Board or the presiding officers are authorized to administer oaths and affirmations, to take or cause to be taken depositions, to issue, quash or modify subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to an appropriate United States district court. All action relating to depositions and subpoenas shall be in accordance with the rules provided in §§ 263.34 and 263.53.

(e) *Recommendation of presiding officers.* The presiding officers shall make a recommendation to the Board concerning the notice or order of suspension, removal, or prohibition within 20 calendar days following the close of the record on the hearing.

§ 263.74 Decision of the Board.

(a) Within 60 days following the close of the record on the hearing, or receipt of written submissions where a hearing has been waived, the Board shall notify the institution-affiliated party whether the notice of suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. The notification shall contain a statement of the basis for any adverse decision by the Board. In the case of a decision favorable to the institution-affiliated party, the Board shall take prompt action to rescind or otherwise modify the order of suspension, removal or prohibition.

(b) In deciding the question of suspension, removal, or prohibition under this subpart, the Board shall not rule on the question of the guilt or innocence of the individual with respect to the crime with which the individual has been charged.

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

§ 263.80 Purpose and scope.

This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank or a bank holding company to achieve and maintain adequate capital.

§ 263.81 Definitions.

(a) *Bank holding company* means any company that controls a bank as defined in section 2 of the BHC Act, 12 U.S.C. 1841, and in the Board's Regulation Y (12 CFR 225.2(b)) or any direct or indirect subsidiary thereof other than a bank subsidiary as defined in section 2(c) of the BHC Act, 12 U.S.C. 1841(c), and in the Board's Regulation Y (12 CFR 225.2(a)).

(b) *Capital Adequacy Guidelines* means those guidelines for bank holding companies and state member banks contained in appendices A and D to the Board's Regulation Y (12 CFR Part 225), and in Appendix A to the Board's Regulation H (12 CFR part 208), or any succeeding capital guidelines promulgated by the Board.

(c) *Directive* means a final order issued by the Board pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in § 263.85 of this subpart.

(d) *State member bank* means any state-chartered bank that is a member of the Federal Reserve System.

§ 263.82 Establishment of minimum capital levels.

The Board has established minimum capital levels for state member banks and bank holding companies in its Capital Adequacy Guidelines. The Board may set higher capital levels as necessary and appropriate for a particular state member bank or bank holding company based upon its financial condition, managerial resources, prospects, or similar factors, pursuant to the procedures set forth in § 263.85 of this subpart.

§ 263.83 Issuance of capital directives.

(a) *Notice of intent to issue directive.* If a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, or as otherwise established under the procedures described in § 263.85 of this subpart, the Board may issue and serve upon such state member bank or bank holding company written notice of the Board's intent to issue a directive to require the bank or bank holding company to achieve and maintain adequate capital within a specified time period.

(b) *Contents of notice.* The notice of intent to issue a directive shall include:

(1) The required minimum level of capital to be achieved or maintained by the institution;

(2) Its current level of capital;

(3) The proposed increase in capital needed to meet the minimum requirements;

(4) The proposed date or schedule for meeting these minimum requirements;

(5) When deemed appropriate, specific details of a proposed plan for meeting the minimum capital requirements; and

(6) The date for a written response by the bank or bank holding company to the proposed directive, which shall be at least 14 days from the date of issuance of the notice unless the Board determines a shorter period is necessary because of the financial condition of the bank or bank holding company.

(c) *Response to notice.* The bank or bank holding company may file a written response to the notice within the time period set by the Board. The response may include:

(1) An explanation why a directive should not be issued;

(2) Any proposed modification of the terms of the directive;

(3) Any relevant information, mitigating circumstances, documentation or other evidence in support of the institution's position regarding the proposed directive; and

(4) The institution's plan for attaining the required level of capital.

(d) *Failure to file response.* Failure by the bank or bank holding company to file a written response to the notice of intent to issue a directive within the specified time period shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of such directive.

(e) *Board consideration of response.* After considering the response of the bank or bank holding company, the Board may:

(1) Issue the directive as originally proposed or in modified form;

(2) Determine not to issue a directive and so notify the bank or bank holding company; or

(3) Seek additional information or clarification of the response by the bank or bank holding company.

(f) *Contents of directive.* Any directive issued by the Board may order the bank or bank holding company to:

(1) Achieve or maintain the minimum capital requirement established pursuant to the Board's Capital Adequacy Guidelines or the procedures in § 263.85 of this subpart by a certain date;

(2) Adhere to a previously submitted plan or submit for approval and adhere to a plan for achieving the minimum capital requirement by a certain date;

(3) Take other specific action as the Board directs to achieve the minimum capital levels, including requiring a reduction of assets or asset growth or restriction on the payment of dividends; or

(4) Take any combination of the above actions.

(g) *Request for reconsideration of directive.* Any state member bank or bank holding company, upon a change in circumstances, may request the Board to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the required minimum capital level. The directive and plan continue in effect while such request is pending before the Board.

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United State district court, pursuant to section 908 (b)(2)(B)(ii) of ILSA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(2) The Board, pursuant to section 910(d) of ILSA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(b) *Other enforcement actions.* A directive may be issued separately, in conjunction with, or in addition to any other enforcement actions available to the Board, including issuance of cease-and-desist orders, the approval or denial of applications or notices, or any other actions authorized by law.

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank or bank holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILSA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank or bank holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

§ 263.85 Establishment of increased capital level for specific institutions.

(a) *Establishment of capital levels for specific institutions.* The Board may establish a capital level higher than the minimum specified in the Board's Capital Adequacy Guidelines for a specific bank or bank holding company pursuant to:

(1) A written agreement or memorandum of understanding between the Board or the appropriate Federal Reserve Bank and the bank or bank holding company;

(2) A temporary or final cease-and-desist order issued pursuant to section 8(b) or (c) of the FDIA (12 U.S.C. 1818(b) or (c));

(3) A condition for approval of an application or issuance of a notice of intent not to disapprove a proposal;

(4) Or other similar means; or

(5) The procedures set forth in paragraph (b) of this section.

(b) *Procedure to establish higher capital requirement*—(1) *Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank or bank holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank or bank holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank or bank holding company. Failure by the bank or bank holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank or bank holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank or bank holding company to submit and adhere to a plan for achieving such higher capital level as the Board may set.

(4) *Enforcement of higher capital level.* The Board may enforce the capital level established pursuant to the procedures described in this section and any plan submitted to achieve that capital level through the procedures set forth in § 263.84 of this subpart.

Subpart F—Practice Before the Board

§ 263.90 Scope.

This subpart prescribes rules relating to general practice before the Board on one's own behalf or in a

representational capacity, including the circumstances under which disciplinary sanctions -- censure, suspension, or debarment -- may be imposed upon persons appearing in a representational capacity, including attorneys and accountants, but not including employees of the Board. These disciplinary sanctions, which continue in effect beyond the duration of a specific proceeding, supplement the provisions of § 263.6(b) of subpart A, which address control of a specific proceeding.

§ 263.91 Censure, suspension or debarment.

The Board may censure an individual or suspend or debar such individual from practice before the Board if he or she engages, or has engaged, in conduct warranting sanctions as set forth in § 263.94; refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual shall be initiated only upon a finding by the Board that the conduct that forms the basis for the disciplinary action is egregious.

§ 263.92 Definitions.

(a) As used in this subpart, the following terms shall have the meaning given in this section unless the context otherwise requires.

(b)(1) *Practice before the Board* includes any matters connected with presentations to the Board or to any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the Board. Such matters include, but are not limited to, the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the Board, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the Board on behalf of another person.

(2) *Practice before the Board* does not include work prepared for an institution solely at its request for use in the ordinary course of its business.

(c) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(d) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth, or the District of Columbia.

§ 263.93 Eligibility to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the Board.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the Board may practice before the Board.

§ 263.94 Conduct warranting sanctions.

Conduct for which an individual may be censured, debarred or suspended from practice before the Board includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly giving false or misleading information, or participating in any way in the giving of false information to the Board or to any Board officer or employee, or to any tribunal authorized to pass upon matters administered by the Board in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications, affidavits, declarations, or any other document or written or oral statement;

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Board by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value;

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, commonwealth, or the District of Columbia for the conviction of a felony or misdemeanor involving personal dishonesty or breach of trust in matters relating to the supervisory responsibilities of the Board, where the conviction has not been reversed on appeal;

(e) Knowingly aiding or abetting another individual to practice before the Board during that individual's period of suspension, debarment, or ineligibility;

(f) Contemptuous conduct in connection with practice before the Board, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter;

(g) Suspension or debarment from practice before the OCC, the FDIC, the OTS, the Securities and Exchange Commission, the NCUA, or any other Federal agency based on matters relating to the supervisory responsibilities of the Board;

(h) Willful or knowing violation of any of the regulations contained in this part.

§ 263.95 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the Board, who has reason to believe that an individual practicing before the Board in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 263.94, may make a report thereof and forward it to the Board.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the Board, the Board may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Board has reason to believe that any individual who practices before the Board in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 263.94 the Board may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding shall be conducted pursuant to § 263.97 and shall be initiated by a complaint issued by the Board that names the individual as a respondent. Except in cases when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section shall not be instituted until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the initiation of the proceeding.

§ 263.96 Conferences.

(a) *General.* The Board's staff may confer with a proposed respondent concerning allegations of misconduct or

other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the Board may consent to suspension from practice. At the discretion of the Board, the individual may be suspended or debarred in accordance with the consent offered.

§ 263.97 Proceedings under this subpart.

Except as otherwise provided in this subpart, any hearing held under this subpart shall be held before an administrative law judge of the OFIA pursuant to procedures set forth in subparts A and B of this part. The Board shall appoint a person to represent the Board in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding shall be disqualified from representing the Board in the hearing. The hearing shall be closed to the public unless the Board, sua sponte or on the request of a party, otherwise directs. The administrative law judge shall refer a recommended decision to the Board, which shall issue the final decision and order. In its final decision and order, the Board may censure, debar or suspend an individual, or take such other disciplinary action as the Board deems appropriate.

§ 263.98 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual will not thereafter be permitted to practice before the Board unless otherwise permitted to do so by the Board pursuant to § 263.99 of this subpart.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual will not thereafter be permitted to practice before the Board during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Board's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Board shall give notice of the order to appropriate officers and employees of the Board, to interested departments and agencies of the Federal Government, and to the appropriate authorities of the State in which any debarred or suspended individual is or was licensed to practice.

§ 263.99 Petition for reinstatement.

The Board may entertain a petition for reinstatement from any person debarred from practice before the Board. The Board shall grant reinstatement only if the Board finds that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Board, in its discretion, affords the petitioner an informal hearing.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

§ 263.100 Authority and scope.

This subpart implements the provisions of the Equal Access to Justice Act (5 U.S.C. 504) as they apply to formal adversary adjudications before the Board. The types of proceedings covered by this subpart are listed in §§ 263.1 and 263.50.

§ 263.101 Standards for awards.

A respondent in a covered proceeding that prevails on the merits of that proceeding against the Board, and that is eligible under this subpart as defined in § 263.103, may receive an award for fees and expenses incurred in the proceeding unless the position of the Board during the proceeding was substantially justified or special circumstances make an award unjust. The position of the Board includes, in addition to the position taken by the Board in the adversary proceeding, the action or failure to act by the Board upon which the adversary proceeding was based. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings.

§ 263.102 Prevailing party.

Only an eligible applicant that prevailed on the merits of an adversary proceeding may qualify for an award under this subpart.

§ 263.103 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named as a party to the adjudicatory proceeding and show that it meets all other conditions of eligibility set forth in paragraphs (b) and (c) of this section.

(b) *Types of eligible applicant.* An applicant is eligible for an award only if it meets at least one of the following descriptions:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(2) Any sole owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary proceeding was initiated; or

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees at the time the adversary proceeding was initiated.

(c) *Factors to be considered.* In determining the eligibility of an applicant:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevailed are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a financial institution shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the financial institution's financial report to its supervisory agency for the last reporting date before the initiation of the adversary proceeding. A bank holding company's net worth will be considered on a consolidated basis even if the bank holding company is not required to file its regulatory reports to the Board on a consolidated basis.

(4) The employees of an applicant include all those persons who were regularly providing services for

remuneration for the applicant, under its direction and control, on the date the adversary proceeding was initiated. Part-time employees are counted on a proportional basis.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. As used in this subpart, "affiliates" are: individuals, corporations, and entities that directly or indirectly or acting through one or more entities control at least 25% of the voting shares of the applicant, and corporations and entities of which the applicant directly or indirectly owns or controls at least 25% of the voting shares. The Board may determine, in light of the actual relationship among the affiliated entities, that aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart and decline to aggregate the net worth and employees of such affiliate; alternatively, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

§ 263.104 Application for awards.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Board whenever the applicant has prevailed in the proceeding within 30 days after service of the final order of the Board disposing of the proceeding.

(b) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of the way in which the applicant believes that the position of the Board in the proceeding was not substantially justified;

(3) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(4) A description of any affiliated individuals or entities, as defined in § 263.103(c)(5), or a statement that none exist;

(5) A declaration that the applicant, together with any affiliates, had a net worth not more than the maximum set forth in § 263.103(b) as of the date the proceeding was initiated, supported by a net worth statement conforming to the requirements of § 263.105;

(6) A statement of the amount of fees and expenses for which an award is sought conforming to § 263.107; and

(7) Any other matters that the applicant wishes the Board to consider in determining whether and in what amount an award should be made.

(c) *Verification.* The application shall be signed by the applicant or an authorized officer of or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

(d) *Service.* The application and related documents shall be served on all parties to the adversary proceeding in accordance with § 263.11, except that statements of net worth shall be served only on counsel for the Board.

(e) *Presiding officer.* Upon receipt of an application, the Board shall, if feasible, refer the matter to the administrative law judge who heard the underlying adversary proceeding.

§ 263.105 Statement of net worth.

(a) *General rule.* A statement of net worth shall be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant, as specified in § 263.103(c)(5). In all cases, the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding.

(b) *Contents.* (1) Except as otherwise provided herein, the statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable for individual applicants as long as the statement provides a reliable basis for evaluation, unless the administrative law judge or the Board otherwise requires. Financial statements or reports filed with or reported to a Federal or State agency, prepared before the initiation of the adversary proceeding for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, shall be acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 263.103(c)(5). The net worth of a bank holding company shall be considered on a consolidated basis. Assets and liabilities of individuals shall include those beneficially owned.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. Net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board or required by law, the statement of net worth shall be for the confidential use of the Board, counsel for the Board, and the administrative law judge.

§ 263.106 Measure of awards.

(a) *General rule.* Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, provided that no award under this subpart for the fee of an attorney or agent shall exceed $75 per hour. No award to compensate an expert witness shall exceed the highest rate at which the Board pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, subject to the limits set forth above, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary solely for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 263.107 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 263.108 Responses to application.

(a) *By counsel for the Board.* (1) Within 20 days after service of an application, counsel for the Board may file an answer to the application.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Board's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(b) *Reply to answer.* The applicant may file a reply only if the Board has addressed in its answer any of the following issues: that the position of the agency was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. Any reply authorized by this section shall be filed within 15 days of service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(c) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 263.109 Further proceedings.

(a) *General rule.* The determination of a recommended award shall be made by the administrative law judge on the basis of the written record of the adversary adjudication, including any supporting affidavits submitted in connection with the application, unless, on the motion of either the applicant or Board counsel, or sua sponte, the administrative law judge or the Board orders further proceedings to amplify the record such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* The administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 263.110 Recommended decision.

The administrative law judge shall file with the Board a recommended decision on the fee application not later than 30 days after the submission of all pleadings and evidentiary material concerning the application. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and, if applicable, an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings as to whether the Board's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application upon the filing of the recommended decision and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 263.111 Action by the Board.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the Board may file written exceptions thereto. A supporting brief may also be filed.

(b) *Decision by the Board.* The Board shall render its decision within 90 days after it has notified the parties that the matter has been received for decision. The Board shall serve copies of the decision and order of the Board upon the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

Board of Governors of the Federal Reserve System, August 5, 1991.

William W. Wiles,

Secretary of the Board.

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Reader Aids

Federal Register

Vol. 56, No. 154

Friday, August 9, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6319.....37135
6320.....37407

Administrative Orders:
Certification:
August 6, 1991.....37819

5 CFR

581.....36723

Proposed Rules:
333.....36741
733.....37480

7 CFR

220.....37954
301.....37606
318.....36724
354.....36724
401.....36724
905.....37641
916.....37821
917.....37821
945.....37822
989.....37642
998.....37645
1240.....37453
1786.....37267

Proposed Rules:
354.....37481
701.....37499
800.....37302
917.....37863
967.....36742
985.....37500

8 CFR

Proposed Rules:
245.....37864

9 CFR

50.....36997
113.....37823
166.....37827

Proposed Rules:
92.....37025
130.....37481

10 CFR

2.....36998
52.....37828
71.....37828
170.....37828
171.....37828

Proposed Rules:
1049.....36743

12 CFR

19.....38024
32.....37272
225.....38048
262.....38048
263.....38048
308.....37968
701.....37276, 37828
741.....37276
747.....37762

Proposed Rules:
356.....37673
574.....37162
922.....37303
931.....37303
932.....37303

13 CFR

107.....37459
121.....37276, 37648

14 CFR

21.....37279
25.....37279
39.....37139-37144, 37282, 37462-37470, 37649
73.....37607
158.....37127

Proposed Rules:
21.....36972-36976
36.....36976
39.....36747, 36748, 37167-37169, 37317-37320
43.....36976
91.....36976
141.....36976
147.....36976

15 CFR

Proposed Rules:
801.....37170
2301.....38004, 38007

16 CFR

1500.....37831

Proposed Rules:
Ch.1.....37026

17 CFR

211.....36999
231.....36999
241.....36999

Proposed Rules:
1.....37026
3.....37026
150.....37049

18 CFR

271.....37145
401.....37954

19 CFR

24.....37838
200.....36725
356.....37802

20 CFR

404.....36932
416.....36932
Proposed Rules:
655.....37145

21 CFR

310.....37792
510.....37472, 37473
520.....37473
524.....37473
558.....37838
878.....36871
1301.....36726, 36727
Proposed Rules:
333.....37622
888.....37954

22 CFR

Proposed Rules:
1007.....37866

23 CFR

635.....37000

24 CFR

201.....36980
203.....36980
234.....36980
235.....37147
888.....37148
889.....36728

27 CFR

Proposed Rules:
9.....37501

29 CFR

1910.....37650
Proposed Rules:
507.....37175
2510.....36750
2617.....36750

30 CFR

913.....37011
914.....37013–37016
920.....37839
946.....37153
Proposed Rules:
784.....37194
817.....37194
914.....37868, 37869
931.....37051, 37870
935.....37871
950.....37873

31 CFR

550.....37156

32 CFR

295.....37873
552.....37130
626.....37019
627.....37019
706.....37284

33 CFR

117.....37474
161.....37475
165.....37851, 37852
Proposed Rules:
100.....37886
117.....37504
161.....36910
165.....37052

36 CFR

7.....37158
Proposed Rules:
13.....37262

37 CFR

Proposed Rules:
1.....37321
10.....37321

38 CFR

Proposed Rules:
4.....37053

39 CFR

111.....36729
Proposed Rules:
111.....36750

40 CFR

52.....37475, 37651
61.....37158
80.....37020
81.....37285, 37288, 37654
271.....37290, 37291
Proposed Rules:
52.....37195
61.....37196
136.....37331
260.....37331
261.....37331
744.....37686

41 CFR

301–8.....37478

42 CFR

Proposed Rules:
441.....37054
448.....37054
489.....37054

46 CFR

Proposed Rules:
Ch. IV.....37505
550.....37069
580.....37069
581.....37069

47 CFR

0.....36729
1.....37665
22.....37853
64.....36729
73.....36733–36735
76.....37954
97.....37160
Proposed Rules:
73.....36751, 36752

48 CFR

1.....37257
5.....37257
8.....37257
9.....37257
10.....37257
14.....37257
15.....37257
16.....37257
17.....37257
19.....37257
25.....37257
27.....37257
31.....37257
33.....37259
35.....37257
36.....37257
42.....37257
43.....37257
44.....37257
45.....37257
49.....37257
52.....37257
219.....37963
232.....37963
252.....37963
352.....37668
2801.....37859
Proposed Rules:
7.....37404
52.....37404

49 CFR

28.....37292
531.....37478
1011.....37860
1151.....37860
Proposed Rules:
107.....36992, 37505
171.....37505
172.....37505
173.....37505
175.....37505
177.....37505
178.....37505
571.....37332
1037.....36752

50 CFR

17.....37668
215.....36735
641.....37606
661.....37161, 37671
663.....37022
672.....36739
685.....37023, 37300
Proposed Rules:
17.....36753, 37200, 37513
217.....36753
227.....36753
685.....37070

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.J. Res. 181/Pub. L. 102-79

Designating the third Sunday of August of 1991 as "National Senior Citizens Day". (Aug. 6, 1991; 105 Stat. 372; 1 page) Price: $1.00

S.J. Res. 40/Pub. L. 102-80

Designating the week beginning September 8, 1991, and the week beginning September 6, 1992, each as "National Historically Black Colleges Week". (Aug. 6, 1991; 105 Stat. 373; 1 page) Price: $1.00

S.J. Res. 142/Pub. L. 102-81

To designate the week beginning July 28, 1991, as "National Juvenile Arthritis Awareness Week". (Aug. 6, 1991; 105 Stat. 374; 1 page) Price: $1.00

H.R. 153/Pub. L. 102-82

To amend title 38, United States Code, to make miscellaneous administrative and technical improvements in the operation of the United States Court of Veterans Appeals, and for other purposes. (Aug. 6, 1991; 105 Stat. 375; 3 pages) Price: $1.00

H.R. 2525/Pub. L. 102-83

Department of Veterans Affairs Codification Act. (Aug. 6, 1991; 105 Stat. 378; 33 pages) Price: $1.25

Last List August 7, 1991

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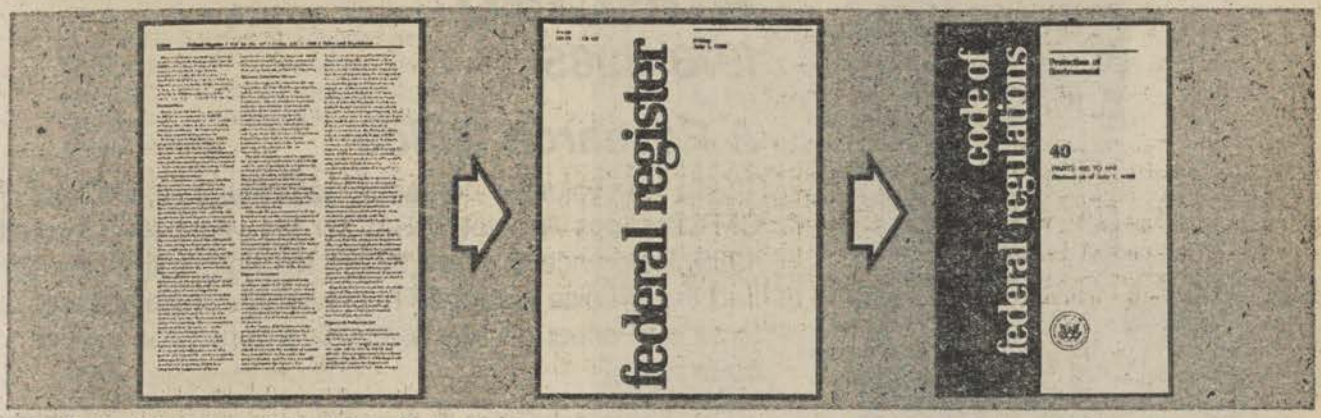

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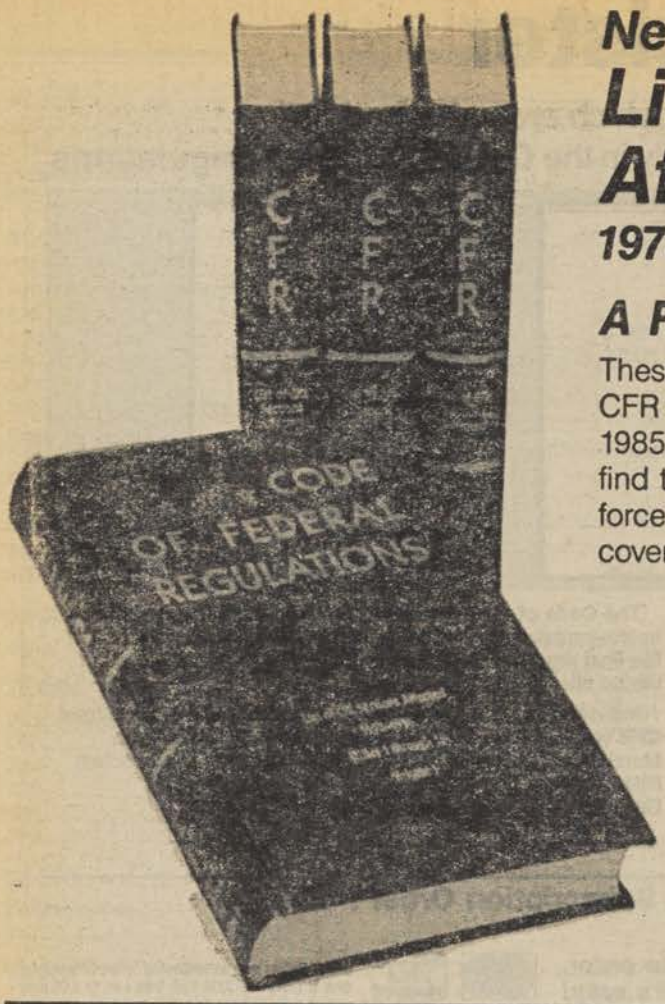

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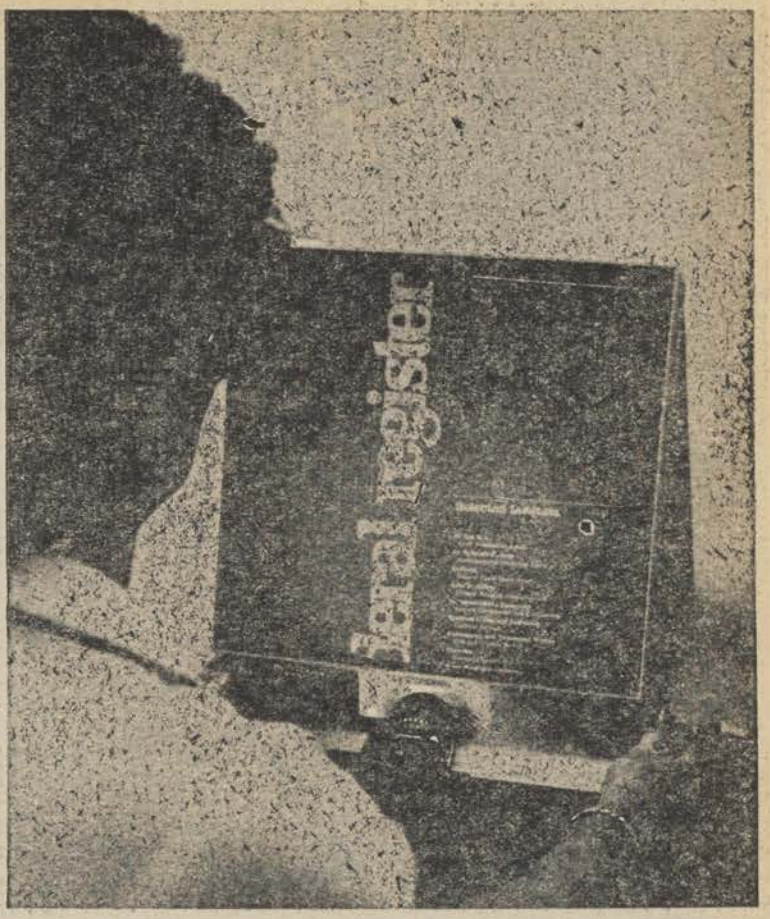

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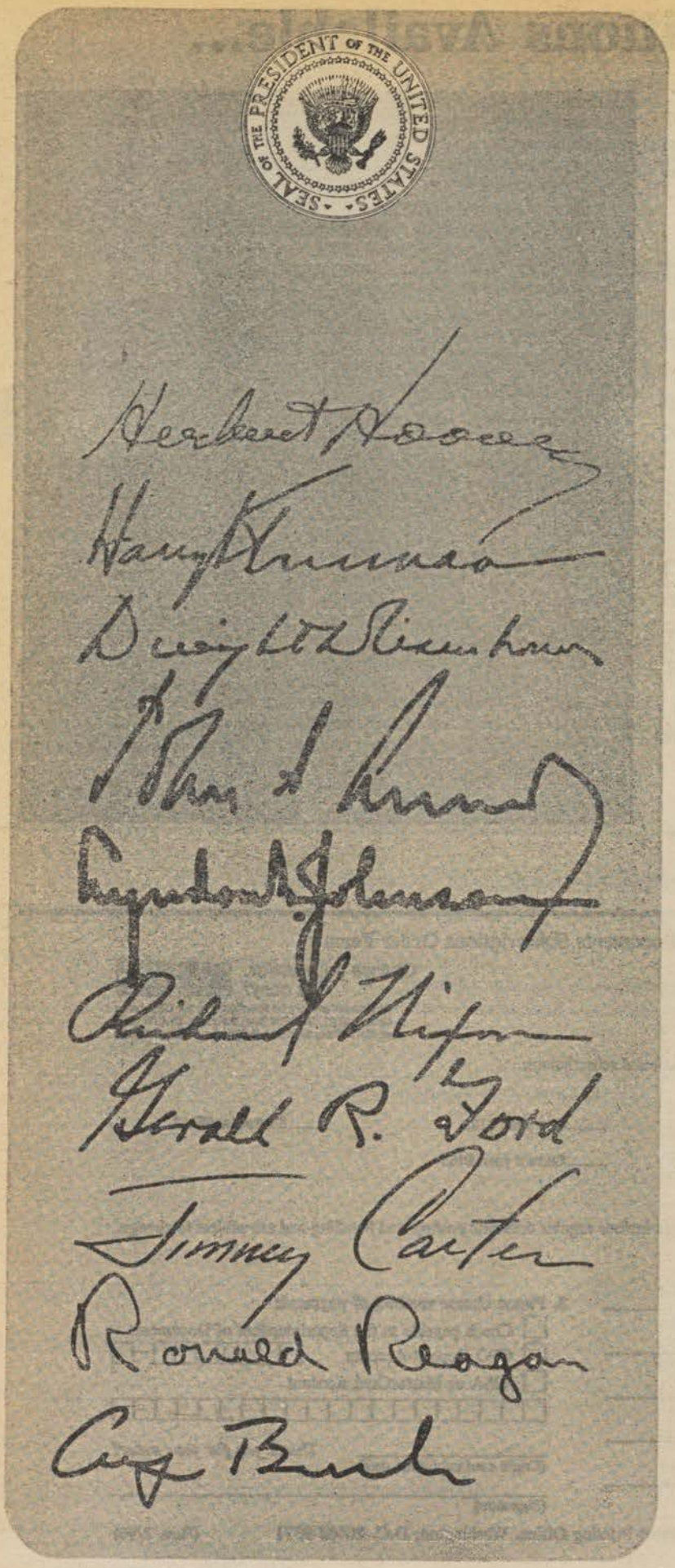

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